SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 379

THE UNITED STATES OF AMERICA, THE INTERSTATE COMMERCE COMMISSION, THE ILLINOIS CENTRAL RAILROAD COMPANY, ET AL., APPELLANTS

VS.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD, BINKLEY COAL COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

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[Caption omitted.]

1 In United States District Court for the Northern District of Illinois, Eastern Division

In Equity No. 13726

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, plaintiff

vs.

UNITED STATES OF AMERICA, DEFENDANT

Bill of complaint filed February 14, 1934

To the Honorable Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division:

Comes now the plaintiff and for its cause of action against the defendant, states:

I

That plaintiff is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin; that plaintiff owns and operates lines of railroad in the States of Indiana, Illinois, Wisconsin, and certain other States, and is engaged in the transportation of property and persons for hire, both interstate and intrastate, as a common carrier by railroad, subject to the Interstate Commerce Act; and that plaintiff has its principal office at Chicago, Illinois, in the Northern District of Illinois.

2 II

That among the protestants upon whose petition the order of the Interstate Commerce Commission hereinafter referred to was made, are the following: Alton Railroad Company, an Illinois corporation; Illinois Coal Traffic Bureau, a voluntary association; Illinois Central Railroad Company, an Illinois corporation; and Chicago, Burlington & Quincy Railroad Company, an Illinois corporation; that one or more of said protestants have their principal office and residence in the Northern District of Illinois.

III

That defendant, United States of America, is sued under an act of Congress approved October 22, 1913, known as the Urgent Deficiency Appropriations Act, 38 Stat. L. 219, to enjoin, set aside, and annul a certain order entered by the Interstate Commerce Commission by Division 2 on the 8th day of November 1933 in a proceeding known as Investigation and Suspension Docket No. 3843, instituted by the Interstate Commerce Commission, hereinafter called "the Commis-

sion", by its order of December 22, 1932, upon the protests of certain corporations and associations hereinabove referred to in paragraph II hereof, and others.

IV

That on, to wit, the 22nd day of November 1932 plaintiff filed tariffs with the Commission to become effective December 23, 1932, which tariffs fixed rates of $1.70 per ton on bituminous coal from mines on its railroad in the Clinton district, located in Vermil-
3 lion and Vigo Counties in the State of Indiana, to each of the following destinations, located on its railroad on Northern Illinois, to wit: Bensenville, Woodale, Itasca, Roselle, Ontarioville, Bartlett, Spaulding, Hammond's, Elgin, Almora, McQueen, Pingree Grove, Starks, Hampshire, New Lebanon, Genoa, Kingston, Kirkland, Fairdale, Monroe Center, Davis Junction, Stillman Valley, Byron, Leaf River, Adeline, Forreston, Harper, Rockford, Freeport, Florence, Shannon, Nichols, Wilkinson, Bradt, DeKalb, Chase, Troxel, and Duffin; and which tariffs also fixed rates of $1.75 per ton on bituminous coal from mines on its railroad in the Linton district, located in Vigo, Sullivan, Greene, and Clay Counties, in the State of Indiana, to each of the said destinations in northern Illinois; that said rates of $1.70 per ton and $1.75 per ton, respectively, constitute reductions of 10 cents per ton under the rates theretofore in effect from said Clinton and Linton districts in Indiana to the first eight destinations above set forth, reductions of 4 cents per ton to the last five destinations above set forth, and reductions of 17 cents per ton to the remaining destinations above set forth; that prior to the effective date of said tariffs, certain associations representing coal producing interests in Illinois and certain railroads serving coal mines in Illinois and the Illinois Commerce Commission filed protests with the Commission against the said tariffs and asked the Commission to institute a proceeding inquiring into the lawfulness of the proposed rates and tariffs; that on the 22nd day of December 1932, the Commission entered its order suspending the operation of said proposed tariffs until July 23, 1933, and subsequently the effective date of the said schedules and tariffs was further postponed until February 23, 1934.

4 V.

That for many years prior to August 20, 1930, plaintiff has been engaged in the transportation of bituminous coal from mines in the said mining districts in Indiana to destinations in northern Illinois, including Rockford and Freeport, and the rates applicable for the movement of said coal bore a direct relationship to the rates applicable for the movement of bituminous coal from mines in Illinois to Rockford and Freeport, Illinois; that the rate applicable for the movement of said coal from said Clinton district in Indiana to Rockford, Illinois, was from April 1, 1913, to August 20, 1930, the same as the rate from the so-called Springfield group in Illinois,

to Rockford, Illinois; that in certain proceedings pending before the Illinois Commerce Commission in Dockets Nos. 13568 and 13569, by order of said Illinois Commission effective August 20, 1930, the rates on bituminous coal moving intrastate from origin mines in Illinois to Rockford and Freeport, Illinois, were reduced 17 cents per ton; that following these proceedings before the Illinois Commerce Commission there was instituted before the Interstate Commerce Commission in Docket No. 23130, a proceeding under section 13 of the Interstate Commerce Act, in which it was charged and alleged that the rates required by the Illinois Commerce Commission to be assessed as maxima for the transportation of coal within Illinois from mines in that State to Rockford and Freeport, Illinois, were unlawful as causing undue and unreasonable advantage, preference and prejudice as between persons or localities in intrastate commerce on the one hand, and interstate commerce on the other hand, and as unjustly and unreasonably discriminating against interstate commerce; that said proceeding was heard before
5 the Interstate Commerce Commission, and in its report and order reported in 182 I. C. C. 537, the Interstate Commerce Commission refused to require the said Illinois intrastate rates to be increased. Following this report and decision of the Interstate Commerce Commission, plaintiff filed its proposed schedule of rates on bituminous coal from mines located on its railroad in Indiana to the destinations named in northern Illinois, which said schedules would restore the relationship which had existed for many years prior to August 20, 1930, between the rates from said Indiana mines to the destination territory and the rates from Illinois mines to the same destination territory, and which proposed schedules of rates would permit plaintiff to continue to transport coal from the said Indiana mines in competition with coal transported from Illinois mines.

VI

That the portion of plaintiff's railroad extending from Chicago in a southerly and easterly direction into Indiana and serving the mines in the aforesaid mining districts of Indiana was constructed primarily as a coal-carrying road and is dependent for its successful and profitable operation, to a very large extent, upon the volume of coal traffic handled thereover; that said portion of plaintiff's railroad, prior to acquisition thereof by plaintiff in 1921, was known as the Chicago, Terre Haute and Southeastern Railway Company, the final value of which, for rate-making purposes, as of June 30, 1916, was found by the Interstate Commerce Commission to be $20,150,000.00; that plaintiff has a single line of railway from mines on its railroad in the said Indiana districts to the above-mentioned destinations in northern Illinois and has for many years transported a large volume of coal over its said line from said Indiana
6 districts to the said Illinois destinations; that a substantial portion of said large volume of coal was transported to Rock-

ford, Illinois, and that the volume of coal transported by plaintiff to the destinations hereinabove named has been materially reduced since the entry of said order of August 20, 1930, by the Illinois Commerce Commission, as is illustrated by the following table, showing movements to Rockford, Illinois:

Year:	*Coal transported to Rockford from Clinton and Linton districts*
1930	74,878 Tons
1931	47,018 "
1932	37,872 "
1933	23,449 "

That during the aforesaid years, 1930, 1931, and 1932, the volume of coal transported to Rockford from the Springfield district in Illinois increased, the volume in 1932 being 146 percent of the volume in 1930.

That for some time after the reduction of the intrastate rates within Illinois on August 20, 1930, the producers of coal in Indiana, in the hope that said long-standing relationship would be reestablished, adjusted their prices of coal so that they could continue to sell coal to consumers located at the aforesaid Illinois destinations; that the Indiana producers can no longer adjust their prices and compete on equal terms with the Illinois producers of coal in their sales to the destinations in northern Illinois, and unless this Honorable Court enjoins, annuls, and sets aside the order of the Commission requiring the cancellation of the proposed rates and schedules, plaintiff will be deprived of thousands of dollars of revenue annually for the transportation of coal and the net income from the operation of plaintiff's said line of railroad will be materially diminished.

7 VII

That by its report and order of November 8, 1933, the Commission by division 2 required the proposed schedules and tariffs to be canceled on or before the 22nd day of January 1934. A copy of said report and order is hereto attached, marked " Exhibit A", and hereby made a part hereof. That on January 3, 1934, plaintiff filed with the Commission its petition for rehearing, reargument, and reconsideration before the entire Commission, and for an extension of the effective date of said order; that on January 5, 1934, the Commission postponed the effective date of said order to February 22, 1934; and that on February 5, 1934, the Commission denied plaintiff's petition for rehearing, reargument, and reconsideration.

VIII

Plaintiff avers and charges that said order of the Commission by division 2 entered in the Investigation and Suspension Proceeding No. 3843, on the 8th day of November 1933, herein complained of and set forth in full as exhibit A, is null and void and should be set aside for the following reasons:

(a) Division 2 misconstrued the law and erred in holding that the burden of justifying said proposed rates was upon the plaintiff railroad company, and in requiring plaintiff to sustain such burden, whereas no such burden is imposed under the law upon railroad companies proposing reduced rates.

(b) Division 2 acted beyond the scope of its authority and erred in entering its order requiring cancellation of the tariffs without a finding that the rates proposed therein were unlawful in violation of some section of the Interstate Commerce Act.

8 (c) Division 2 acted beyond the scope of its authority and erred in entering its order requiring cancellation of the tariffs, as the evidence in the record was wholly insufficient to justify a finding that the rates proposed were unlawful in violation of the Interstate Commerce Act.

(d) Division 2 erred in entering its order requiring cancellation of the tariff fixing rates to each of the above-mentioned thirty-eight (38) destinations in Illinois, for the reason that the Commission gave consideration only to the mileage and service to the two most distant destinations from the origin points, to wit: Rockford and Freeport, and failed to give any consideration to the facts of lesser mileages and different service to the remaining thirty-six (36) destinations.

(e) Division 2 erred in entering its order requiring the cancellation of the tariff-fixing rates to each of the above-mentioned destinations in Illinois and in basing its decision on evidence of average distances from all mines on all railroads in said Clinton and Linton origin groups, to Rockford and Freeport, instead of on average distances from all mines on plaintiff's railroad in said origin groups to each of the thirty-eight (38) destinations hereinabove referred to.

(f) Division 2 erred as a matter of law in denying plaintiff its natural geographical advantage and in holding that plaintiff, which transports over its single line short route approximately ninety-five percent (95%) of the coal moving from the aforesaid origin groups in Indiana to the aforesaid destinations in Illinois, cannot establish a rate, not found by the Commission to be unlawful or in violation of the Interstate Commerce Act, because such rate might be unreasonably low or unlawful if established by other carriers that

9 transport approximately only five percent (5% of the tonnage from said origin groups in Indiana to the aforesaid destinations in Illinois, over their more circuitous two- and three-line routes.

(g) Division 2 erred in entering its order requiring the cancellation of said tariff, for the reason that said order requires plaintiff to assess charges for the transportation of coal from the Indiana origin points named to the destinations in northern Illinois via its single line, which are relatively higher, distance considered, than the rates in which plaintiff is compelled to join with other railroad companies for the movement of coal from Illinois mines to the same destinations; and for the further reason that rates proposed by

plaintiff in the tariff ordered to be canceled are relatively higher, distance considered, than the rates in which plaintiff is compelled to join with other railroad companies for the movement of coal from Illinois mines to the same destinations.

(h) Division 2 erred in entering the order requiring the cancellation of the tariff because said order was based upon mere surmise and conjecture and not upon any evidence as to what would result in the event the rates proposed by plaintiff were permitted to go into effect.

(i) The order of Division 2 in that, with no finding that the proposed rates are unreasonable, discriminatory, prejudicial, or otherwise unlawful, it deprives the plaintiff of the right to exercise managerial judgment in reducing rates and in that it deprives the plaintiff of the right to meet competition on an equal rate basis, is abritrary and unreasonable, is based on an erroneous theory of law and is an order that transcends the lawful functions and powers of the Commission.

10

IX

Plaintiff further avers and charges that the Commission in denying as aforesaid the plaintiff's petition for rehearing, reargument, and reconsideration before the entire Commission, filed January 3, 1934, acted arbitrarily and unreasonably.

X

Plaintiff further avers that if the order of the Commission by Division 2 directing the cancellation of the tariff publishing the reduced rates is permitted to become effective, plaintiff will be irreparably injured and damaged, and that unless said order is enjoined and set aside by this honorable court, said order will become effective February 22, 1934.

XI

That plaintiff has no adequate remedy at law.

Wherefore, inasmuch as your plaintiff is remediless in the premises at law and relievable only in a court of equity, plaintiff prays as follows:

1. That this bill of complaint be received and filed, that a writ of subpoena be issued by the clerk of the court, as provided by law, commanding the United States of America to appear and defend this action and answer this bill of complaint, but not under oath, the answer under oath being hereby expressly waived;

2. That a preliminary or interlocutory order or injunction be entered restraining and suspending the enforcement, operation, and execution of the order of the Commission by Division 2

11 dated the 8th day of November 1933 in investigation and suspension docket no. 3843, and that defendant, its officers and agents be enjoined and restrained from enforcing said order until final determination of this cause;

3. That upon final hearing herein, a decree be entered perpetually enjoining, suspending, annulling, and setting aside the enforcement, operation, and execution of the order of the Commission by division 2, dated the 8th day of November 1933 in investigation and suspension docket no. 3843, and that defendant, its officers and agents, be perpetually enjoined and restrained from enforcing said order;

4. That the judge of this court call to his assistance two other judges, one of whom shall be a circuit judge, and that upon five days' notice of the time and place of hearing being given to the Attorney General of the United States and the Interstate Commerce Commission, this court proceed to hear and determine the aforesaid application, as provided by law;

5. That plaintiff have such other and further relief in the premises as the nature of the case shall require, and to this court shall seem meet.

O. W. DYNES,
M. L. BLUHM,
C. L. TAYLOR,
Solicitors for the Plaintiff.

J. N. DAVIS,
Of Counsel.

12 [*Duly sworn to by J. T. Averitt, jurat omitted in printing.*]

13 *Exhibit A to bill of complaint*

Interstate Commerce Commission

Investigation and suspension Docket No. 3843, coal from Indiana to Illinois

Submitted October 5, 1933. Decided November 8, 1933

Proposed reduced rates on bituminous coal, in carloads, from mines on the line of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company in the Brazil-Clinton and Linton-Sullivan origin groups in Indiana to Rockford and Freeport, Ill., and to certain points intermediate thereto found not justified. Suspended schedules ordered canceled and proceeding discontinued.

C. L. Taylor, J. N. Davis, Jones Waffle, M. F. Gallagher, and E. B. Wilkinson for respondent.

Guy A. Gladson, John T. Quisenberry, R. P. DeCamp, J. A. Behrle, J. E. Flansburg, Leo P. Day, John A. Connors, R. B. Battey, G. H. Shafer, W. Y. Wildman, L. F. Malum, C. B. Cardy, W. E. Rosenbaum, and C. S. Bather for protestants.

Report of the Commission

Division 2, Commissioners Aitchison, Porter, and Tate

TATE, *Commissioner:*

Exceptions to the proposed report were filed by respondent to which replies were made by the protesting carriers and by the Illinois Coal Traffic Bureau, and the case was orally argued.

By schedules filed to become effective on December 23, 1932, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter called the Milwaukee, proposed to reduce the rates on
14 bituminous coal, in carloads, from mines on its line in the Brazil-Clinton and Linton-Sullivan origin groups in Indiana to Rockford and Freeport, Ill., and to certain points intermediate thereto in that State. Upon protests filed by the Illinois Commerce Commission certain competing carriers and individual operators and coal-mining organizations in Illinois the schedules were suspended until July 23, 1933. By voluntary action of respondent the effective date has been further postponed until January 23, 1934. Rates will be stated in amounts per net ton.

Southern Illinois is the principal coal-producing territory in Illinois, and the southern Illinois group, one of the several groups in that portion of the State, is considered the base group to destinations in northern Illinois and the Northwest. The rates from other Illinois groups and from western Kentucky are based differentially on those from the southern Illinois group. For many years prior to 1930 the coal rates from the Springfield group in Illinois and the Brazil-Clinton group in Indiana to the destinations here considered were maintained on a parity, 30 cents under those from the southern Illinois group. The rates from the other Indiana groups were, and are, made of differentials over those from the Brazil-Clinton group. On August 20, 1930, by order of the Illinois Commerce Commission, the intrastate rates from the southern Illinois and Springfield groups were reduced from $2.17 to $2 and from $1.87 to $1.70, respectively, a reduction of 17 cents in each instance.

The present rate from the Brazil-Clinton group to Rockford and Freeport is $1.87, and from the Linton-Sullivan group $1.92. The Milwaukee proposed to reduce both of those rates 17 cents, to $1.70 and $1.75, thereby again placing the Brazil-Clinton group rate on a parity with that from the Springfield group, and basing the rate from the Linton-Sullivan group on the present differential of 5 cents over that from the Brazil-Clinton group. Reductions to the level of the rates proposed to Rockford and Freeport were also proposed to intermediate destinations.

Respondent considers all of the rates from Illinois, Indiana, and western Kentucky to this destination territory as less than reasonable maxima. But it feels that by reason of the lower rates
15 from the Illinois groups it is being deprived of tonnage which

could well move from mines on its lines in the Brazil-Clinton and Linton-Sullivan groups. It points out that, although certain of its lines form through routes from those origin groups to Rockford and the other destinations here considered, they also afford the shortest routes from the Illinois groups in connection with other carriers, and that it is required to join in the lower intrastate rates therefrom on coal moving in competition with that from mines on its Indiana lines.

An exhibit introduced by the Illinois Central Railroad Company, protestant, indicates that the volume of coal moved to Rockford in 1932 from the southern Illinois group was 42.7 percent of that moved in 1929; from the Springfield group 245 percent; from the Brazil-Clinton group 141.1 percent; and from the Linton-Sullivan group 24.6 percent; from all groups in Illinois 53.4 percent; and from all groups in Indiana 87.7 percent. The same exhibit indicates that the volume of coal moved to Rockford in 1931 from the southern Illinois group was 54.3 percent of that moved in 1929; from the Springfield group 187.7 percent; from the Brazil-Clinton group 208.2 percent; from the Linton-Sullivan group 11.9 percent; from all groups in Illinois 58.4 percent; and from all groups in Indiana 88.7 percent. The carrier used 1929 for this comparison because that was the first full year prior to the reductions in the Illinois intrastate rates, effective in the fall of 1930. At the argument the Milwaukee excepted to the percentage of 141.1 given by the Illinois Central as representing the 1932 movement of coal over that of 1929 from the Brazil-Clinton group to Rockford. The exception was based on a statement made at the hearing by an official of a coal company in that origin group that his company alone shipped more than twice the amount of coal shown in the exhibit as having moved from that group to Rockford in 1929. If the exhibit is in fact incorrect, no definite figures were given to show the extent of the error. The general statement of the Milwaukee that the 1929 movements from the Brazil-Clinton and Linton-Sullivan groups, as shown in the exhibit, were transposed can not be accepted as definitely showing the movements from the two origin groups.

16 The Milwaukee urged that as the reduced rates were proposed to apply only from mines on its Indiana lines, the matter now before us relates only to the rates from those mines. It further stated that whatever action may be taken by the other lines serving the two origin groups toward meeting the proposed rates would be immaterial, as 95 to 99 percent of the coal moving therefrom to Rockford and Freeport moves over its lines. We cannot subscribe to that statement, in so far as it relates to the pertinency of any action which might be taken by the other lines in the groups to meet reduced rates established by the Milwaukee. We have refused to find proposed reductions in rates justified when it is shown that they would be harmful to the rate structure as a whole. Container Service, 173 I. C. C. 377, page 430.

An exhibit introduced at the hearing indicates that six lines, in addition to the Milwaukee, serve either one or both of the Brazil-Clinton and Linton-Sullivan groups. The rates from the lower Indiana coal groups are generally based differentially on those from the Brazil-Clinton group. Witnesses expressed the view that if the proposed reduced rates are established by the Milwaukee similar reductions will be made, for competitive reasons, by other carriers in the same groups, and that reductions will be sought also from the lower Indiana groups. We are of the opinion that the grouping of the Indiana rates upon differential relationships cannot be ignored in the determination of this case.

In Intrastate Rates on Bituminous Coal in Illinois, 182 I. C. C. 537, we stated that some of the rates therein assailed from Illinois groups to Rockford and Freeport were well below the reasonable level of rates in that territory, but that the same seemed to be true of most of the rates from the Indiana groups to the same destinations. We pointed out that from the more distant Indiana groups to those destinations and to Dixon, Ill., the rates ranged as low as 56 percent of the scale prescribed in *Holmes & Hallowell Co.* v. *G. N. Ry. Co.*, 69 I. C. C. 11, and stated that sufficient justification had not been shown for requiring any of the intrastate rates to the destinations mentioned to be increased until the low rates from Indiana were placed on a level more nearly commensurate with the general level of rates in that territory.

17 At pages 549 and 550 of Intrastate Rates on Bituminous Coal in Illinois, supra, comparisons were made of the percentage relationships of the rates from the southern Illinois and Brazil-Clinton groups to Rockford and Freeport with those under the Holmes & Hallowell scale. For example, the rate from the southern Illinois group to Freeport is there shown as 64 percent, and from the Brazil-Clinton group to the same destination 67 percent, of the rates for similar distances under that scale. However, it now appears that the distance upon which the southern Illinois relationship was based was the short-line distance from that group, and that the Brazil-Clinton relationship was based on the average of the distances from all mines in the group. The following table, computed from distances taken from the present record, and apparently representing fairly the average of the short tariff routes from all origins on all lines in the groups, shows the percentage relationships of the rates from the origin groups indicated to Rockford and Freeport to the rates for similar distances under the Holmes & Hallowell scale.

To	Rockford			Freeport		
From groups	Rate	Distance	Percentage of Holmes & Hallowell scale	Rate	Distance	Percentage of Holmes & Hallowell scale
		Miles			*Miles*	
Springfield	$1.70	237.9	68.5	$1.70	261	63.7
So. Illinois	2.00	365	60.9	2.00	384	58.8
Brazil-Clinton [1]	1.87	272	68.5	1.87	304	64
Linton-Sullivan [1]	1.92	298	67.1	1.92	327	63.1

[1] Respondent seeks to establish rates of $1.70 from the Brazil-Clinton group and $1.75 from the Linton-Sullivan group.

As previously pointed out, the Milwaukee seeks to establish the proposed rates of $1.70 and $1.75 not only to Rockford and Freeport, but also to stations on its lines in Illinois intermediate thereto.[1] It urges that any comparison of the distances and rates from the Indiana groups with those from Illinois should include such intermediate points. The average short tariff routes from all origins on
18 all lines in the Springfield and Brazil-Clinton groups to all of the destinations named in the footnote average 252 and 257 miles, respectively. To the last four destinations named, in the eastern portion of Illinois, the average distance from the Brazil-Clinton group, 231 miles, is less than that from the Springfield group by 11 miles. The average distances to all of the other stations named are 258 miles from the Springfield group and 274 miles from the Brazil-Clinton group. The table above shows that to Rockford and Freeport the average distances from the Springfield group are 34.1 and 43 miles, respectively, less than those from the Brazil-Clinton group.

The stations on the Milwaukee to which the reduced rates have been proposed do not take a group rate from the Brazil-Clinton group. The rate to DeKalb is $1.74, to Rockford and Freeport $1.87, and to all other points shown in the footnote $1.80, except that to Forreston, Byron, and Davis Junction the rate is $1.87 over the circuitous route in connection with the line of the Pennsylvania Railroad Company. The Milwaukee's proposal therefore involves a reduction of 17 cents in the rates from the two origin groups to Rockford and Freeport, as compared with a reduction of only 4 cents to DeKalb and 10 cents to the other intermediate points, with the exception of the rate over the circuitous route of the Pennsylvania as mentioned above. We are of the opinion that the distances from the Brazil-Clinton group to Rockford and Freeport, rather than those to all of the stations in the footnote, afford the proper basis for comparison.

[1] The principal stations on the Milwaukee between Rockford and Freeport and the Indiana border, as indicated by an exhibit of record, are Forreston, Byron, Davis Junction, Kirkland, Genoa, Elgin, Bensenville, and DeKalb, Ill.

Only the rates from mines on the Milwaukee in the Brazil-Clinton and Linton-Sullivan groups are before us in this proceeding. The immediate effect of the Milwaukee's proposal would be to split those groups, with lower rates from mines on that line than from mines on competing lines in the same groups. As pointed out herein, it is suggested by protestants that this condition would not long prevail, as the other carriers in those groups would propose similar reduced rates for competitive reasons. Such reductions would destroy the differential relationships now existing as between those groups and the other Indiana groups and western Kentucky, with the probability of mines and carriers in such other groups seeking similar
19 reductions. This would result in a level of rates from the Indiana groups lower than that which we stated, in Intrastate Rates on Bituminous Coal in Illinois, supra, to be well below the reasonable level of rates in this territory.

While it may be, as the Milwaukee states, that the rate situation as between the two Indiana groups and Illinois groups is in need of correction, we are not at all convinced that the proposed rates would afford a lawful solution of the problem. To the contrary, we are convinced that any change in the present relationships in the Indiana-Illinois adjustment to these northern Illinois destinations should not be undertaken in the piecemeal manner here proposed.

We find that the proposed schedules have not been justified. An order will be entered requiring their cancelation and discontinuing this proceeding.

CORRECTED ORDER

At a session of the Interstate Commerce Commission, division 2, held at its office in Washington, D. C., on the 8th day of November, A. D. 1933

Investigation and Suspension Docket No. 3843

Coal from Indiana to Illinois

It appearing that by order dated December 22, 1932, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order, and suspended the operation of said schedules until July 23, 1933, and that subsequently respondent voluntarily postponed the effective date of the schedules until January 23, 1934;

It further appearing that a full investigation of the matters and things involved has been had, and that said division, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

It is ordered that the respondent herein be, and it is hereby,
20 notified and required to cancel said schedules on or before January 22, 1934, upon notice to this Commission and to the general public by not less than one day's filing and posting in the manner prescribed in section 6 of the interstate commerce act, and that this proceeding be discontinued.

By the Commission, division 2.

[SEAL] GEORGE B. McGINTY,
Secretary.

21 In United States District Court

[Title omitted.]

Notice of hearing, etc.

Filed February 21, 1934

To the honorable HOMER S. CUMMINGS,
Attorney General for the United States of America:
To the INTERSTATE COMMERCE COMMISSION:

Please take notice that plaintiff's bill of complaint in the above-mentioned case was filed on this day in the United States District Court for the Northern District of Illinois, eastern division, and that the judge of said court hearing equity cases is convening a specially constituted three-judge court as provided for by the Urgent Deficiency Appropriations Act of October 22, 1913, 38 Statutes at Large 219; and has fixed Wednesday, the twenty-first day of February 1934, at 10:00 a. m., at the Federal Building in Chicago, Illinois, as the time and place for the hearing on the prayer of plaintiff for an interlocutory injunction as prayed for in plaintiff's bill of complaint.

A true copy of the bill of complaint filed herein is hereto attached and you may appear at the above-mentioned time and place on the hearing of plaintiff's motion for an interlocutory injunction if you see fit to do so.

O. W. DYNES,
M. L. BLUHM,
C. L. TAYLOR,
Solicitors for Plaintiff.

J. N. DAVIS,
Of Counsel.

Received a copy of the above and foregoing notice and of the bill of complaint therein referred to this 15th day of February, A. D. 1934.

For the Attorney General:

UGO COMSI,
Executive Assistant to the Attorney General.
DAVID W. KNOWLTON,
For Interstate Commerce Commission.

22 In United States District Court

[Title omitted.]

Intervening petition of the Binkley Mining Company, et al.

Filed February 20, 1934

To the honorable judges of the United States District Court for the Northern District of Illinois, Eastern Division, in chancery sitting:

The Binkley Mining Company, Clinton Coal Company, Electric Shovel Coal Corporation, Fayette Realty & Development Company, Fort Harrison Mining Company, Jackson Hill Coal & Coke Company, Shirkie Coal Company, West Clinton Coal Company, Baker-Dora Coal Corporation, Central City Mining Company, Inc., Glendora Coal Company, Hamilton Coal Mining Company, Linton-Summit Coal Company, Maumee Collieries Company, Sherwood-Templeton Coal Company, Superior Fourth Vein Coal Company, respectfully represent unto Your Honors that:

1. The Chicago, Milwaukee, St. Paul & Pacific Railroad Company, a corporation, hereinafter referred to as the Milwaukee, has heretofore filed its bill of complaint in this court in which it prays for a preliminary order and final decree enjoining the enforcement of the order of the Interstate Commerce Commission entered in the proceeding before said Commission known as "Investigation and Suspension Docket No. 3843, Coal from Indiana to Illinois."

23 2. Your petitioners further represent that each of them is a corporation organized and existing under the laws of the State of Indiana.

3. Your petitioners further represent that the above named petitioners were parties to the proceeding before the Interstate Commerce Commission, "Coal from Indiana to Illinois" I. & S. Docket 3843, in that each of the petitioners is a member of the Coal Trade Association of Indiana, which association appeared and introduced evidence at the hearing before the Interstate Commerce Commission in said proceeding, I. & S. Docket 3843.

4. Your petitioners further represent that each of them own or operate one or more coal mines in the State of Indiana which are served by the Milwaukee and are located in what are described in the tariffs of the Milwaukee as the Clinton district and the Linton district, some of petitioners having mines in the Clinton district and some in the Linton district.

5. Your petitioners further show that on or about November 21, 1932, the Milwaukee filed with the Interstate Commerce Commission supplement 76 to its Tariff No. B-5133, in which it published a rate of $1.70 per ton for the transportation of coal via its line from mines in the Clinton district to 38 destinations on its line in

Illinois, beginning with Bensenville on the main line running west of Chicago to and including Rockford and Freeport, Illinois, and beginning with Duffin on the so-called "Delmar branch" to and including Rockford and Freeport, Illinois. Said supplement likewise published a rate of $1.75 per ton to the said destinations from mines on the line of the Milwaukee in the Linton district; that said rates were reductions from the rates formerly in effect from said mines to said destinations; that said destinations were and should
24 be important markets for the sale of coal produced by these petitioners, and petitioners formerly shipped large quantities of coal to many of said destinations; that the rates on coal from competing coal fields in Illinois to these destinations were reduced in August 1930; that petitioners would be able to continue to ship substantial quantities of coal to these destinations under the rates published in said supplement 76 but are unable to ship coal from their said mines to said destinations under the rates now in effect in competition with coal produced in said competing districts in Illinois from which the rates were reduced in 1930.

Your petitioners therefore represent that they have an interest in the controversy or question before the Interstate Commerce Commission and that they have an interest in the suit brought by the Milwaukee to enjoin and annul the order of the Commission entered in said proceedings.

6. Your petitioners allege that the order of the Interstate Commerce Commission entered in said proceedings, "Coal from Indiana to Illinois", I. & S. Docket 3843, is arbitrary and unlawful in the following respects:

A. The order is based upon an erroneous construction of the Interstate Commerce Act in that the Commission held as a matter of law that the burden of proof was upon the Milwaukee to justify the rates published by it in supplement 76 to its tariff, I. C. C. No. B–5133, which were reduced rates.

B. The Commission arbitrarily refused to consider competent, relevant, and uncontradicted evidence material to a decision of the issue before said Commission, such as:

25 (1) Evidence showing the length of haul via the Milwaukee from the mines on the Milwaukee in Indiana from which the rates were published to the destinations in Illinois to which said rates applied.

(2) Evidence that 95% of the coal moving to Rockford and Freeport, Illinois, two of the destinations involved, from mines in Indiana, having rates of $1.87 and $1.92 to Rockford and Freeport, originated upon the line of the Milwaukee.

(3) Evidence that the transportation from the mines on the Milwaukee to these destinations involved only a single line movement.

(4) Evidence that the Milwaukee was required to participate in the transportation of coal from mines in the State of Illinois to these destinations from which rates of $1.70 per ton applied to these desti-

nations, in which the total haul from the mines to said destinations was far in excess of the haul from the mines in Indiana served by the Milwaukee from which it published said rates of $1.70 and $1.75.

(5) Evidence showing distances from the mines on the Milwaukee Railroad to representative destinations to which the rates in supplement 76 applied and the average distance from mines on the Milwaukee in each of said Clinton and Linton districts to such points.

C. The order of the Commission is improper and unlawful because the Commission proceeded upon an erroneous theory of law that it could determine the lawfulness of the rates published by the Milwaukee to thirty-eight destinations on its line by a con-
26 sideration of distances and rates to only two of said destinations, which two destinations, Rockford and Freeport, are farther from the mines than any of the thirty-eight destinations involved, and do not represent the average haul or service to said destinations.

D. The order of the Commission is based upon an erroneous theory of law and is arbitrary because the Commission did not consider the rates and distances via the Milwaukee to the destinations involved, but considered only rates and average distances via all carriers serving the Brazil-Clinton and Linton-Sullivan groups to Rockford and Freeport in comparison with rates and average distances from the so-called "central Illinois or Springfield group" in Illinois and from so-called "southern Illinois group" to Rockford and Freeport.

E. The Commission in its report states that the only issue before it was the lawfulness of the rates published by the Milwaukee. It erroneously attempted to determine the lawfulness of these rates by a consideration not of the rates published by the Milwaukee and the service of the Milwaukee but of the rates and services of other carriers serving mines in Indiana and publishing rates of $1.87 per ton to Rockford and Freeport from such mines.

F. The order of the Commission is predicated upon an erroneous construction of the Interstate Commerce Act in that it denies the Milwaukee the right to reduce its rates from points of origin on its line to destinations on its line, not because such reduced rates are in any way unlawful but because other carriers serving mines in the same general rate groups publish rates higher than those proposed by the Milwaukee, the service via such other carriers being substantially greater than via the Milwaukee.

27 G. The order of the Commission is predicated upon an erroneous assumption of fact in that the Commission states in its report that the suspended rates of the Milwaukee would split the Brazil-Clinton and Linton-Sullivan groups.

H. The order of the Commission is not predicated upon facts appearing of record in this case, but upon guess and surmise as to what might happen in the future.

I. There are no findings of fact from which the Commission could conclude that the rates published by the Milwaukee in said supple-

ment no. 76 are in violation of anything declared to be unlawful by the Interstate Commerce Act.

(1) There is no finding, and no evidence which would support such finding, that the rates proposed by the Milwaukee are unreasonable in violation of section 1 of said act.

(2) There is no finding, and no evidence which would support such finding, that the rates proposed by the Milwaukee are discriminatory in violation of section 2 of the said act.

(3) There is no finding, and no evidence which would support such finding, that the rates proposed by the Milwaukee would accord to these petitioners an undue benefit or advantage or would subject any person, firm, or locality to an undue prejudice and disadvantage in violation of section 3 of the Interstate Commerce Act,

(4) There is no finding, and no evidence which would support such finding, that the rates proposed by the Milwaukee violate the provisions of the long- and short-haul provision, section 4 of said act.

28 (5) There is no finding, and no evidence which would support such finding, that the supplement no. 76 was not filed in conformity with the provisions of section 6 of the Interstate Commerce Act.

Section 15 (7), of the Interstate Commerce Act which authorizes the suspension of tariffs, provides that such tariffs may be suspended pending an investigation by the Commission of the lawfulness of the rates and that upon concluding such investigation, the Commission may enter such order with reference thereto as would be proper in a proceeding initiated after they (the rates) had become effective. Notwithstanding this provision, the Commission had made no finding or conclusion in regard to the lawfulness of the rates of the Milwaukee published in said supplement no. 76.

J. The report upon which said order is predicated is arbitrary and improper and contains statements of alleged fact which are contrary to the evidence or are erroneous because essential related facts are not stated or considered.

K. The order of the Commission is arbitrary and unlawful, because the report on which it is predicated fails to find or state or consider material facts shown by uncontroverted evidence of record.

L. The order of the Commission is based upon an erroneous construction of the Interstate Commerce Act in that the report of the Commission states that it may be that the rate situation as between the two Indiana groups and the Illinois groups is in need of corrections, and proceeds, "We are not at all convinced that the proposed rate would afford a lawful solution to the problem. To the contrary we are convinced that any change in the present relationships in the Indiana-Illinois adjustment to these northern Illinois
29 destinations shall not be undertaken in the piecemeal manner here proposed."

The report contains no finding of fact to support the above conclusion.

The above statement is predicated on the erroneous construction of the Interstate Commerce Act that the burden was upon the Milwaukee to convince the Commission that the proposed rates would afford a lawful solution to the theoretical problem of the rate adjustment between all the groups in Indiana with the Illinois groups.

The above statement is predicated upon an erroneous construction of the Interstate Commerce Act in that nothing in the act requires the Milwaukee to adjust the rates of other carriers serving mines in said two Indiana groups or in the Illinois groups, before it can publish lawful rates from mines which it serves in Indiana to destinations which it serves in Illinois.

7. Petitions further represent that they are being injured and damaged by the continued suspension of the rates published by the Milwaukee in said Supplement No. 76 to its tariff I. C. C. No. B–5153, and that unless the order of the Commission requiring the cancellation of said supplement be set aside and its enforcement enjoined, the said Milwaukee will cancel its said supplement and these petitioners will be permanently deprived of reasonable rates to the destinations involved, and will be permanently and irreparably injured and damaged; that petitioners have no adequate remedy at law, and is remediless except in this court.

Wherefore, petitioners pray that they may be permitted to intervene in this cause as parties plaintff in accordance with the provisions of the statutes of the United States known as the
30 "Urgent Deficiency Appropriation Act", 38 Stat. L. 219.

Petitioners further pray that a preliminary injunction or restraining order may be entered by this court restraining the enforcement of said order of the Commission, and that upon final hearing herein a decree be entered declaring said order to be null, void, and of no effect and perpetually enjoining enforcement, operation, and execution of said order and that petitioners may have such other and further relief in the premises as the nature of the case shall require and to this court shall seem meet.

GALLAGHER, RINAKER, WILKINSON & HALL.

Solicitors for Binkley Mining Company, Clinton Coal Company, Electric Shovel Coal Corporation, Fayette Realty & Development Company, Fort Harrison Mining Company, Jackson Hill Coal & Coke Company, Shirkie Coal Company, West Clinton Coal Company, Baker-Dora Coal Corporation, Central City Mining Company, Inc., Glendora Coal Company, Hamilton Coal Mining Company, Linton-Summit Coal Company, Maumee Collieries Company, Sherwood-Templeton Coal Company, Superior Fourth Vein Coal Company.

31 [*Duly sworn to by Hubert E. Howard. Jurat omitted in printing.*]

32 In United States District Court

[Title omitted.]

Order continuing hearing

February 21, 1934

This cause coming on to be heard on this 21st day of February 1934, before a specially constituted three-judge court, on plaintiff's application for an interlocutory injunction, and it appearing to the court that the Attorney General of the United States of America and the Interstate Commerce Commission were, on the 15th day of February 1934, notified of plaintiff's intention to apply for an interlocutory injunction herein on February 21, 1934, as shown by the notice and acceptance of service filed herein; and it appearing further to the court that the Interstate Commerce Commission has extended the effective date of its order of November 8, 1933, being the order herein complained of, for sixty (60) days from February 22, 1934, and that the parties hereto have agreed, subject to the approval of the court, upon a continuance of the hearing on plaintiff's application for an interlocutory injunction.

It is therefore ordered, adjudged, and decreed by the court that the hearing of plaintiff's application for an interlocutory in-
33 junction be and the same is hereby continued and assigned for hearing before this court or some other three-judge court in this district, specially constituted according to law, on the 15th day of March 1934, without further notice to the Attorney General of the United States of America or the Interstate Commerce Commission, or any parties who have intervened, or may hereafter intervene, in these proceedings.

EVAN A. EVANS,
Circuit Judge.
JOHN P. BARNES,
District Judge.
WILLIAM H. HOLLY,
District Judge.

34 In United States District Court

[Title omitted.]

Petition for leave to intervene

Filed March 9, 1934

To the honorable the Judges of the District Court for the Northern District of Illinois, Eastern Division:

Now comes the Alton Railroad Company and represents that it has an interest in the matters involved in this proceeding and desires to intervene and become a party defendant. In support of its petition it shows:

(1) Petitioner is a railroad corporation, organized and existing under the laws of the State of Illinois, having its principal office in the city of Chicago, Illinois. It owns a railroad located in the States of Illinois and Missouri, with principal termini at Chicago, Illinois, St. Louis, Missouri, Kansas City, Missouri, and Peoria, Illinois, and operates said railroad as a common carrier of passengers and property for hire. It interchanges carload freight with plaintiff and other coal-carrying railroads at many points in the State of Illinois, and its rails form a part of various through routes from coal fields in Illinois to Rockford and Freeport, Illinois.

35 (2) Petitioner is a party to joint through rates for the transportation of bituminous coal in carloads from many of the Illinois coal fields to Rockford and Freeport, Illinois, and engages in the transportation of such coal in competition with plaintiff in the transportation of coal to such destination from the Brazil-Clinton and Linton-Sullivan coal fields in Indiana.

(3) By schedules filed with the Interstate Commerce Commission effective on December 23, 1932, plaintiff proposed to reduce rates on bituminous coal in carloads from mines on its line in the Brazil-Clinton and Linton-Sullivan origin groups in Indiana to Rockford and Freeport, Illinois, and to certain other points intermediate thereto in Illinois. The schedules were suspended by the Interstate Commerce Commission and that Commission, after an exhaustive hearing, by order dated November 8, 1933, denied the plaintiff the right so to reduce its rates and required it to cancel its schedules. The effective date of the order has been postponed by the Interstate Commerce Commission from time to time, and if said order is enjoined, annulled, or set aside as prayed for by plaintiff herein, said reduced rates of plaintiff will go in effect, and coal now moving over the rails of your petitioner will be supplanted at Freeport and Rockford, Illinois, by coal moving over the rails of plaintiff from Linton-Sullivan and Brazil-Clinton districts of Indiana, by reason of which your petitioner will be greatly injured. Your petitioner

was a party to proceedings before the Interstate Commerce Commission which led to the entry of said order of November 8, 1933.

36 (4) Your petitioner further represents that the order of the Interstate Commerce Commission entered and made in said proceeding entitled "Coal from Indiana to Illinois", investigation and suspension docket 3843, against which plaintiff brings this suit, is valid and legal, and does not violate any of the legal rights of plaintiff, and your petitioner, because of its interest of the subject matter, desires to be made a party defendant to this cause in order to participate in the proceedings to test the validity of said order.

Wherefore, your petitioner prays that leave be granted it to intervene in and be made a party defendant in the above-entitled cause, and that it may have such other and further relief in the premises as may be meet.

THE ALTON RAILROAD COMPANY,
By SILAS H. STRAWN,
GUY A. GLADSON,
Its Solicitors.

37 In United States District Court

[Title omitted.]

Order granting leave to intervene

March 9, 1934

On application duly made, and the court being fully advised in the premises,

It is ordered that leave be and the same is hereby granted to the Alton Railroad Company to file its intervening petition herein, and that it be made a party defendant to this cause.

Be it further ordered that said The Alton Railroad Company be and it hereby is given six (6) days in which to answer or otherwise plead to the bill of complaint filed herein.

Enter:

BARNES, *Judge.*

37-A In United States District Court

[Title omitted.]

Answer of United States of America Filed March 15, 1934

United States, the above-named defendant, for answer to the bill of complaint filed herein against it says:

I

United States admits that the facts alleged in paragraphs I, II, III, and IV of the bill of complaint are true.

II

United States disclaims sufficient knowledge of the matters, facts, and conclusions alleged in paragraphs V and VI of the bill of complaint to enable it to form a belief as to the truth or falsity thereof, and it therefore neither admits nor denies the allegations in said paragraphs; except that it admits the allegation in said paragraph V that the Interstate Commerce Commission conducted a proceeding under section 13 of the Interstate Commerce Act as therein alleged and, upon evidence duly heard and considered by it, rendered its report and order entitled "Intrastate Rates on Bituminous Coal in Illinois", 182 I. C. C. 537, to the complete text of which the
37-B Court is respectfully referred for full, complete, and accurate information concerning the Commission's statements, findings, conclusions, and requirements therein.

III

United States admits the allegations contained in paragraph VII of the bill, and admits that exhibit A thereto is a true and correct copy of the report and order issued by the Interstate Commerce Commission on November 8, 1933, in "Investigation and Suspension Docket No. 3843, Coal from Indiana to Illinois."

IV

United States denies each and every allegation contained in paragraphs VIII, IX, and X of the bill, and denies that the Interstate Commerce Commission's said order of November 8, 1933, is null, void, or unlawful in any respect for any of the reasons set forth in said paragraphs, or for any other reason.

Wherefore, having fully answered the bill of complaint, United States prays that the relief therein prayed be denied and the bill of complaint dismissed with costs to the plaintiff, and that it have the benefit of such other and further orders, decrees, or relief as may be just and proper.

DWIGHT H. GREEN,
United States Attorney.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
HAROLD M. STEPHENS,
Assistant Attorney General.

[File endorsement omitted.]

37-C In United States District Court

[Title omitted.]

Answer of the Alton Railroad Company

Filed March 15, 1934

The Alton Railroad Company, intervening defendant, now and at all times hereafter saving and reserving to itself any and all manner of benefit and advantage of exceptions to the many errors and insufficiencies in plaintiff's bill of complaint contained, for answer to said bill of complaint says:

I

This defendant admits that the facts alleged in paragraphs I, II, III, and IV of the bill of complaint are true.

II

This defendant admits the truth of the allegations contained in paragraph V of the bill of complaint, except that it denies that the rates proposed by plaintiff were necessary in order to permit plaintiff to transport coal from the Indiana mines served by plaintiff to the destinations involved in this proceeding in competition with coal transported from Illinois mines.

37-D III

This defendant admits that the portion of plaintiff's railroad extending from Chicago in a southerly and easterly direction into Indiana and serving certain mines in the Clinton and Linton districts was constructed primarily as a coal-carrying road; admits that a portion of plaintiff's railroad prior to acquisition thereof by plaintiff in 1921 was known as the Chicago, Terre Haute & Southeastern Railroad Company; admits that plaintiff has a single line of railroad from mines on its railroad in said Indiana districts to the destinations involved in this proceeding in northern Illinois, all as alleged in paragraph VI of the bill of complaint, but denies the other allegations made and the conclusions drawn in said paragraph of said bill of complaint.

IV

This defendant admits the truth of the allegations contained in paragraph VII of said bill of complaint.

V

This defendant denies the allegations made and conclusions drawn in paragraphs VIII, IX, and X of the bill of complaint, and each and every part of the same in manner and form as alleged.

Wherefore, having fully answered, this defendant prays that the bill of complaint be dismissed and that such further order or orders as may be appropriate be entered by this honorable court.

THE ALTON RAILROAD COMPANY,
By SILAS H. HAWN,
GUY A. GLADSON,
Its Solicitors.

[File endorsement omitted.]

38 In United States District Court

[Title omitted.]

Intervention of Interstate Commerce Commission

Filed March 15, 1934

To the Honorable the Judges of said Court:

In accordance with the provisions of section 212 of the Judicial Code, 36 Stat. L. 1150 (U. S. Code, sup. VI, title 28, sec. 45a), we hereby enter the appearance of the Interstate Commerce Commission as a party defendant, and of ourselves, as its counsel, in the above-entitled suit.

DANIEL W. KNOWLTON,
Chief Counsel.
J. STANLEY PAYNE,
Assistant Chief Counsel.

39 In United States District Court

[Title omitted.]

Petition of Illinois Central Railroad Company, Chicago & Illinois Midland Railway Company, Chicago, Burlington & Quincy Railroad Company, L. W. Baldwin and Guy A. Thompson, trustees of the Missouri Pacific Railroad Company, for leave to intervene

Filed March 15, 1934

To the Honorable the Judges of the District Court for the Northern District of Illinois, Eastern Division:

Now come the Illinois Central Railroad Company, Chicago & Illinois Midland Railway Company, Chicago, Burlington & Quincy Railroad Company, and L. W. Baldwin and Guy A. Thompson, trus-

tees of the Missouri Pacific Railroad Company, in accordance with the provisions of section 212 of the Judicial Code (U. S. C. A., title 28, section 45a), and represent that each of them has an interest in the matters involved in this proceeding and desires to intervene and become a party defendant. In support of their petition the petitioners show:

1. Petitioner, Illinois Central Railroad Company, is a railroad corporation, organized and existing under the laws of the State of Illinois, having its principal office in the city of Chicago, Illinois. It owns lines of railroad within the States of Indiana, Kentucky, and Illinois and operates said lines of railroad as common carriers of passengers and property for hire.

2. Petitioner, Chicago & Illinois Midland Railway Company, is a railroad corporation organized and existing under the laws of the State of Illinois, having its principal office in the city of Chicago, Illinois. It owns a line of railroad within the State of
40 Illinois and operates said railroad as a common carrier of passengers and property for hire.

3. Petitioner, Chicago, Burlington & Quincy Railroad Company, is a railroad corporation, organized and existing under the laws of the State of Illinois, having its principal office in the city of Chicago, Illinois. It owns a line of railroad located in the State of Illinois and operates said line of railroad as a common carrier of passengers and property for hire.

4. Petitioners, L. W. Baldwin and Guy A. Thompson, are the duly appointed and acting trustees of the Missouri Pacific Railroad Company, bankrupt in the United States District Court for the Eastern District of Missouri, and as trustees of said Missouri Pacific Railroad Company are engaged in the operation of a line of railroad as a common carrier of passengers and property for hire within the State of Illinois.

5. Petitioners individually or in connection with other railroads are engaged in the transportation of bituminous coal from mines in Indiana, Illinois, and western Kentucky to Rockford and Freeport, Illinois, and points on the railroad of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company intermediate to Rockford and Freeport, Illinois, and mines in the Brazil-Clinton and Linton-Sullivan groups in Indiana in competition with coal transported by the plaintiff, Chicago, Milwaukee, St. Paul & Pacific Railroad Company, from mines in the said Brazil-Clinton and Linton-Sullivan groups in Indiana to Rockford and Freeport, Illinois, and said intermediate destinations.

6. By schedules filed with the Interstate Commerce Commission, to become effective December 23, 1932, plaintiff proposed to reduce rates on bituminous coal, in carloads, from mines on its line in the Brazil-Clinton and Linton-Sullivan origin groups in Indiana
41 to Rockford and Freeport, Illinois, and to certain other points intermediate thereto in Illinois. The schedules were sus-

pended by the Interstate Commerce Commission, and that Commission, after an exhaustive hearing, by order dated November 8, 1933, denied the plaintiff the right so to reduce its rates and required it to cancel its schedules. The effective date of the order has been postponed by the Interstate Commerce Commission from time to time, and if said order is enjoined, annulled, or set aside as prayed for by plaintiff herein, said reduced rates of plaintiff will go into effect, and coal now moving over the rails of your petitioners will be supplanted at Freeport and Rockford and said intermediate points in Illinois by coal moving over the rails of plaintiff from Linton-Sullivan and Brazil-Clinton groups in Indiana, by reason of which your petitioners will be greatly injured. Your petitioners, Illinois Central Railroad Company, Chicago & Illinois Midland Railway Company, and Chicago, Burlington & Quincy Railroad Company, and the Missouri Pacific Railroad Company, were parties to the proceedings before the Interstate Commerce Commission which led to the entry of said order of November 8, 1933.

7. Your petitioners further represent that the order of the Interstate Commerce Commission entered and made in said proceeding entitled "Coal from Indiana to Illinois", Investigation and Suspension Docket No. 3843, against which plaintiff brings this suit, is valid and legal, and does not violate any of the legal rights of plaintiff, and your petitioners, because of their interest in the subject matter, desire to be made parties defendant to this cause in order to participate in the proceedings to test the validity of said order.

42 Wherefore, your petitioners pray that leave be granted them to intervene in and be made parties defendant in the above-entitled cause, and that they may have such other and further relief in the premises as may be meet.

ILLINOIS CENTRAL RAILROAD COMPANY,
CHICAGO & ILLINOIS MIDLAND RAILWAY COMPANY.
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,
L. W. BALDWIN AND GUY A. THOMPSON, TRUSTEES OF THE MISSOURI PACIFIC RAILROAD COMPANY,
By J. T. QUISENBERRY,
E. A. SMITH,
WALTER MCFARLAND,
Their Solicitors.

43 In United States District Court

[Title omitted.]

Order continuing hearing

March 15, 1934

It is ordered by the court that the application for temporary injunction be and the same is hereby continued to 10 a. m. April 10, A. D. 1934.

44 In United States District Court

[Title omitted.]

Answer of Illinois Central Railroad Company, Chicago & Illinois Midland Railway Company, Chicago, Burlington & Quincy Railroad Company, and L. W. Baldwin and Guy A. Thompson, trustees of the Missouri Pacific Railroad Company

Filed March 24, 1934

The Illinois Central Railroad Company, Chicago & Illinois Midland Railway Company, Chicago, Burlington & Quincy Railroad Company, and L. W. Baldwin and Guy A. Thompson, trustees of the Missouri Pacific Railroad Company, intervening defendants, now and at all times hereafter saving and reserving to themselves any and all manner of benefit and advantage of exceptions to the many errors and insufficiencies in plaintiff's bill of complaint contained, for answer to said bill of complaint say:

I

These defendants admit that the facts alleged in paragraphs I, II, III, and IV of the bill of complaint are true.

II

These defendants admit the truth of the allegations contained in paragraph V of the bill of complaint, except that they deny that the rates proposed by plaintiff were necessary in order to permit plaintiff to transport coal from the Indiana mines served by plaintiff to the destinations involved in this proceeding in competition with coal transported from Illinois mines.

45 III

These defendants admit that the portion of plaintiff's railroad extending from Chicago in a southerly and easterly direction into Indiana and serving certain mines in the Clinton and Linton districts was constructed primarily as a coal-carrying road; admit that a portion of plaintiff's railroad prior to acquisition thereof by plaintiff in 1921 was known as the Chicago, Terre Haute & Southeastern Railroad Company; admit that plaintiff has a single line of railroad from mines on its railroad in said Indiana districts to the destinations involved in this proceeding in northern Illinois, all as alleged in paragraph VI of the bill of complaint, but deny the other allegations made and the conclusions drawn in said paragraph of said bill of complaint.

IV

These defendants admit the truth of the allegations contained in paragraph VII of said bill of complaint.

V

These defendants deny the allegations made and conclusions drawn in paragraphs VIII, IX, and X of the bill of complaint, and each and every part of the same in manner and form as alleged.

Wherefore, having fully answered, these defendants pray that the bill of complaint be dismissed and that such further order or orders as may be appropriate be entered by this honorable court.

ILLINOIS CENTRAL RAILROAD COMPANY.
CHICAGO & ILLINOIS MIDLAND RAILWAY COMPANY.
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.
L. W. BALDWIN AND GUY A. THOMPSON,
Trustees of Missouri Pacific Railroad Company.
By JOHN T. QUISENBERRY,
E. W. SMITH,
WALTER MCFARLAND,
Their Solicitors.

46 In United States District Court

[Title omitted.]

Order continuing hearing

April 10, 1934

This cause coming on to be heard on the tenth day of April 1934 before a specially constituted three-judge court, on plaintiff's application for an interlocutory injunction; and it appearing that the parties hereto have agreed, subject to the approval of the court, upon a continuance of the hearing on plaintiff's application for an interlocutory injunction;

It is therefore ordered, adjudged, and decreed by the court that the hearing on plaintiff's application for an interlocutory injunction be, and the same is hereby, continued and assigned for hearing before this court on the twentieth day of April 1934, without further notice to the Attorney General of the United States of America or the Interstate Commerce Commission or any parties who have intervened, or may hereafter intervene, in these proceedings.

EVAN A. EVANS,
Circuit Judge.
JOHN P. BARNES,
District Judge.
WILLIAM H. HOLLY,
District Judge.

47 In United States District Court for the Northern District of Illinois, Eastern Division

In Equity No. 13726

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, PLAINTIFF

vs.

UNITED STATES OF AMERICA, DEFENDANT

Order for interlocutory injunction

April 20, 1934

On this twentieth day of April, A. D. 1934, this cause came on to be heard on plaintiff's application for an interlocutory injunction, and it appearing that notice of said application has been duly given to the defendants in conformity with the statute, and counsel for the plaintiff and defendants and intervenors having been heard, and the court being fully advised in the premises, the court, from the sworn bill and from the record and transcript of the proceedings had before the Interstate Commerce Commission, a certified copy of which record and transcript of proceedings is now on file in this cause, finds as follows:

(1) That plaintiff, a Wisconsin corporation, operating lines of railroad in the States of Indiana, Illinois, Wisconsin, and other States, has brought this action against the United States of America, under the Urgent Deficiencies Appropriations Act, to enjoin, set aside, and annul a certain order of the Interstate Commerce Commission, entered on November 8, 1933, in investigation and suspension docket no. 3843; that among the protestants upon whose petition the order of the Interstate Commerce Commission was
48 made, are various corporations having their principal office and residence in the northern district of Illinois; and that the court has jurisdiction of the subject matter of this suit and of all the parties, plaintiff, defendant, and intervenors.

(2) That plaintiff has for many years engaged in the transportation of coal from mines on its railroad in Indiana to destinations in northern Illinois, including Rockford and Freeport, in competition with railroads serving mines in Illinois, and the rates applicable for the movement of said coal for many years bore a direct relationship to the rates applicable for the movement of bituminous coal from mines in Illinois to Rockford and Freeport; that, effective August 20, 1930, the Illinois Commerce Commission reduced the intrastate rates on bituminous coal from origin mines in Illinois, to Rockford and Freeport, 17 cents per ton; that the State courts in Illinois refused to enjoin said reduction; that the Interstate Commerce Com-

mission, in a thirteenth section application, being docket no. 23130, directed against said intrastate Illinois rates, refused to require said intrastate rates to be increased; that following this refusal, plaintiff filed its proposed schedule of rates, which would restore the relationship which had existed for many years prior to August 20, 1930, between the rates from said Indiana mines to the destination territory in northern Illinois, and the rates from Illinois mines to the same destination territory; and that the Interstate Commerce Commission has ordered said schedule of rates proposed by plaintiff cancelled, effective April 22, 1934.

(3) That plaintiff has a single line of railway from mines on its railroad in Indiana to said destinations in northern Illinois, and has for many years transported a large volume of coal from said Indiana mines to said Illinois destinations, which volume has been materially diminished since the year 1930, when the low intrastate rates prescribed by the Illinois Commerce Commission for substantially the same haul became effective.

49 (4) That the rates proposed by plaintiff in the suspended tariff will restore the relationship which existed for many years prior to August 20, 1930, between the rates from the said Indiana mines to the said northern Illinois destinations and the rates from the Illinois mines to the same destinations.

(5) That there is no substantial evidence upon which the Commission could find that the rates proposed by plaintiff are unreasonable, in violation of any section of the Interstate Commerce Act.

(6) That the order of the Interstate Commerce Commission deprives defendant of the exercise of its managerial judgment in fixing competitive rates within the zone of reasonableness, at which it is willing to transport coal.

(7) That the Commission misinterpreted its power and assumed the power to declare a rate unreasonable and unlawful without evidence to support such a finding, and assumed the power to require the cancellation of a rate without a finding and without any evidence that said rate was less than a reasonable minimum rate.

(8) That there is a reasonable probability that the plaintiff will succeed on final hearing.

(9) That plaintiff has no adequate remedy at law.

(10) That unless the order of the Interstate Commerce Commission entered on November 8, 1933, and as amended by supplemental orders in investigation and suspension docket no. 3843, Coal from Indiana to Illinois, be enjoined, plaintiff will be required to cancel the proposed tariffs on or before April 22, 1934, and that irreparable damage will result to plaintiff for the reason that if plaintiff is required to cancel said tariffs before the issues herein presented are finally determined, plaintiff will be without relief, and if the issues herein are finally adjudicated in its favor, the plaintiff will

50 be required to file another tariff with the Interstate Commerce Commission, which tariff will be subject to the protest

of competing railroads and suspension by the said Commission; and irreparable damage will result to plaintiff for the further reason that unless this interlocutory injunction be granted plaintiff will sustain substantial losses of revenue from the transportation of coal which it cannot thereafter recoup.

It is therefore ordered, adjudged, and decreed by the court that the interlocutory injunction prayed for be, and the same is hereby, granted and that an interlocutory injunction be, and the same is hereby, issued out of this court restraining and suspending enforcement of the order o fthe Interstate Commerce Commission in investigation and suspension docket no. 3843, Coal from Indiana to Illinois, dated November 8, 1933, and of said order as amended, requiring the plaintiff to cancel said schedules of rates on or before April 22, 1934, and that the respondents and each of them, their officers, members, attorneys, agents, and employes, and all other persons whomsoever, be, and they are hereby, enjoined and restrained from enforcing, or in any manner attempting to enforce or carry out, said order or the terms thereof until further order of this court.

EVAN A. EVANS,
Circuit Judge.
JOHN P. BARNES,
District Judge.
WILLIAM H. HOLLY,
District Judge.

51 In United States District Court

[Title omitted.]

Amended answer of Interstate Commerce Commission

Filed May 11, 1934

The Interstate Commerce Commission, intervening defendant in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiff's bill of complaint, as amended, contained, for answer thereto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

Answering paragraphs I and II of the bill of complaint, as amended, the Commission admits for the purpose of this suit that the allegations therein contained are true.

I

52 II

Answering paragraphs III to XI, inclusive, of the bill of complaint, as amended, the Commission admits and alleges that it made and entered a report and order dated November 8, 1933, referred to in paragraphs III and VII of the bill of complaint, as amended, and made a part thereof as exhibit A, in a proceeding then pending before it entitled "Investigation and Suspension Docket No. 3843, Coal from Indiana to Illinois"; that in said proceeding the plaintiff filed schedules to become effective on December 23, 1932, proposing to reduce its rates on bituminous coal, in carloads, from mines on its line in the Brazil-Clinton origin group in Indiana to Rockford and Freeport, Ill., from $1.87 to $1.70 and from the Linton-Sullivan origin group in Indiana to the same stations from $1.92 to $1.75, with reductions that will result in the same rates to intermediate points in Illinois; that protests against the proposed reductions were filed by the Consolidated Coal Company of St. Louis; the Illinois Coal Traffic Bureau; the Springfield, Illinois, Coal Traffic Bureau; the Alton Railroad, Chicago, Burlington & Quincy Railroad, Chicago & Illinois Midland Railroad, Illinois Central Railroad, Missouri Pacific Railroad, and Wabash Railroad; and the Illinois Commerce Commission; that on December 22, 1932, the Commission entered its order suspending the operation of said proposed tariffs until July 23, 1933, and subsequently the effective date of the said schedules and tariffs has been further postponed until April 23, 1934; that full hearings were had and thereafter the Commission made and entered and served upon all the parties in said proceeding the report of November 8, 1933, 197 I. C. C. 245, referred to in paragraphs III and VII of the bill of complaint, as
53 amended, and made a part thereof as exhibit A, to which the Commission respectfully refers the court for information concerning its findings and requirements in the premises; that following the service of the Commission's said report of November 8, 1933, plaintiff herein, referred to as the Milwaukee, filed a petition for rehearing, reargument, and reconsideration before the entire Commission, referred to in paragraph VII of the bill of complaint, as amended, which petition was denied by the Commission on February 5, 1934; that thereafter the proceeding was reopened for reargument, which was had before the entire Commission on April 6, 1934; and that subsequently the Commission made and entered and served upon all the parties in said proceeding its report and order of April 18, 1934, referred to and made a part of this answer as appendix I, to which the Commission respectfully refers the court for information concerning its findings and requirements in the premises; that in said proceeding the parties thereto, including the plaintiff herein, were, and each of them was, accorded the full hearing provided for by the Interstate Commerce Act; that in said hearings a large volume of testimony and other evidence bearing upon

the matters covered in said reports and orders was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of plaintiff herein by its counsel; that at said hearing and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the particular questions raised by plaintiff in this suit, whereupon the Commission determined said matters and entered and served upon all the parties to said proceeding, including the plaintiff herein,
54 its said reports and orders; that said reports and orders included the Commission's findings of fact, decision, conclusions, order, and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said reports, the Commission made the findings and stated the conclusions upon which said order is based.

The Commission further alleges that the findings and conclusions in said reports were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceeding as aforesaid.

The Commission further alleges that in making said reports it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties to said proceedings by their respective counsel, including matters covered by the allegations of the bill of complaint, as amended, herein.

The Commission further alleges that said orders of November 8, 1933, and April 18, 1934, were not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support them; that in making said orders the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in the bill of complaint, as amended.

Further answering paragraph VIII of the bill of complaint, as amended, the Commission denies that its said order of November 8, 1933, as amended by its order of April 18, 1934, is invalid for any of the reasons set forth in said paragraph, or for any other reason.
55 Further answering paragraph IX of the bill of complaint, as amended, the Commission denies the truth of the allegations therein contained.

Further answering paragraph X of the bill of complaint, as amended, the Commission denies that its said order of November 8, 1933, as amended by its order of April 18, 1934, causes plaintiff irreparable damage or any damage, and denies that plaintiff will suffer irreparable damage or any damage if said order is not stayed and enjoined.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill of com-

plaint, as amended, in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said reports and orders of November 8, 1933, and April 18, 1934, which reports and orders are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said bill of complaint, as amended, be dismissed.

INTERSTATE COMMERCE COMMISSION,
By E. M. REIDY.

DANIEL W. KNOWLTON,
Chief Counsel, of Counsel.

56 [*Duly sworn to by Hugh M. Tate; jurat omitted in printing.*]

57 *Appendix I*

Interstate Commerce Commission

Investigation and Suspension Docket No. 3843

Coal from Indiana to Illinois

Submitted April 6, 1934. Decided April 18, 1934

On argument and reconsideration previous findings that the proposed reduced rates on bituminous coal, in carloads, from mines on the line of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company in the Brazil-Clinton and Linton-Sullivan origin groups in Indiana to Rockford and Freeport, Ill., and to certain points intermediate thereto were not justified, and that the suspended schedules be canceled and the proceeding discontinued, affirmed. Original report 197 I. C. C. 245.

Appearances as shown in the original report.

Report of the Commission on Argument and Reconsideration

TATE, *Commissioner:*

In the original report in this proceeding, 197 I. C. C. 245, division 2 found not justified the proposed reduced rates on bituminous coal, in carloads, from mines on the line of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, hereinafter called the Milwaukee, in the Brazil-Clinton and Linton-Sullivan origin groups in Indiana to Rockford and Freeport, Ill., and to certain points intermediate thereto in Illinois. An order was entered directing that the suspended schedules be canceled on or before January 22, 1934, and the proceeding discontinued. On January 2, 1934, the respondent filed a petition for rehearing, reargument, and reconsideration before us, and for an extension of the effective date of the order. On January 5, 1934, the effective date of the order was postponed until

58 February 22, 1934, but we denied the petition in all other respects. Respondent then filed a petition in the District Court of the United States for the Northern District of Illinois, Eastern Division, seeking to enjoin the order entered by division 2. That petition was to have been heard on February 21, 1934, but the date for hearing has been postponed from time to time until April 20, 1934. On February 20, 1934, we further postponed until April 23, 1934, the effective date of the outstanding order, and on March 7, 1934, we reopened the proceeding for argument before us, which has been had. The facts are largely stated in the original report, and any so stated will be repeated herein only to the extent necessary. Rates and differentials in rates will be stated in amounts per net ton.

The coal areas in Indiana and Illinois are divided into several groups from which group rates apply. The principal Indiana groups are Brazil-Clinton, Linton-Sullivan, Princeton, and Boonville. The principal Illinois groups, with which we are here concerned, are Springfield and southern Illinois. Keen competition in the sale of coal exists between the Indiana groups on the one hand, and the Illinois groups on the other hand, and also between the individual groups in each of the States named, at the destinations here considered. The rates from the various origin groups in Illinois are definitely related to each other. They are generally in conformity with the findings in the Illinois Coal Cases, 1920, 62 I. C. C. 741, and 64 I. C. C. 751. The rates from the various Indiana groups are closely related to the rates from the Illinois groups and are also differentially related to each other, but in general these relations have not been fixed by us. A differential of 35 cents over the
59 southern Illinois group was fixed from western Kentucky to northern Illinois points, among others, in Illinois-Indiana Coal Cases, 128 I. C. C. 265, and recently affirmed in West Kentucky Coal Bureau v. Illinois Central R. Co., 172 I. C. C. 279.

Southern Illinois is the principal coal-producing territory in Illinois, and the southern Illinois group, one of the several groups in that portion of the State, is considered the base group to destinations in northern Illinois and the Northwest. The rates from other Illinois groups and from western Kentucky are based differentially on those from the southern Illinois group. For many years prior to 1930 the coal rates from the Springfield group in Illinois and the Brazil-Clinton group in Indiana to the destinations here considered were maintained on a parity, 30 cents under those from the southern Illinois group. The rates from the other Indiana groups were and are made of differentials over those from the Brazil-Clinton group. On August 20, 1930, by order of the Illinois Commerce Commission, the intrastate rates from the southern Illinois and Springfield groups, among others, were reduced from $2.17 to $2 and from $1.87 to $1.70, respectively, a reduction of 17 cents in each instance, thus destroying the parity that had existed prior to that date, between the rates from the Indiana groups on the one hand, and the Illinois groups on the

other. Like reductions were later published from the western Kentucky group so as to preserve the relation with the southern Illinois group prescribed in Illinois-Indiana Coal Cases, supra.

Subsequent to the reduction in the Illinois intrastate rates, the principal carriers, including respondent herein, operating
60 within the State of Illinois, filed a complaint with us, in which it was alleged that the reduced rates, hereinbefore referred to, on bituminous coal, in carloads, prescribed by the Illinois Commerce Commission were in violation of section 13 of the Interstate Commerce Act. They asked us to find that the rates assailed were unlawful and would cause an undue and unreasonable advantage, preference, and prejudice as between persons and localities in intrastate commerce on the one hand, and in interstate commerce on the other, and an undue, unreasonable, and unjust discrimination against interstate commerce. Specific comparisons were made of the rates assailed from the Illinois groups to Rockford, Freeport, and other destinations with the rates from the Indiana groups to the same destinations. In the decision therein, Intrastate Rates on Bituminous Coal in Illinois, 182 I. C. C. 537, hereinafter called the Illinois Case, we found that the rates assailed on bituminous coal, in carloads, from mines in Illinois to Rockford, Freeport, and other points, should not be found unlawful under section 13 of the act until and unless the interstate rates from Indiana groups to the same destinations were increased to a level more nearly commensurate with the general level of the rates on coal in that territory. Based on the rate comparisons introduced in that proceeding, we stated:

"While it is evident that a number of the assailed rates from Illinois groups to Rockford, Freeport, and Dixon are well below the reasonable level of rates in this territory, that appears to be true also of most of the rates from the Indiana groups to the same destinations. For example, the rate from the Brazil-Clinton group to Dixon is only 66.5 percent of the Holmes & Hallowell scale, which is the same
61 percentage of that scale as is reflected by the assailed rate from southern Illinois to Dixon; and the rate from Brazil-Clinton to Freeport is only 67 percent of the scale, as compared with 64 percent from southern Illinois to Freeport and 66 percent from southern Illinois to Rockford. Rates from the more distant Indiana groups to these three destinations range as low as 56 percent of the scale. The Illinois producers urge with much force that their rates to Rockford, Freeport, and Dixon should not be increased so long as such low rates from the Indiana groups to the same destinations are permitted to continue. The principal competition of the Illinois producers at these destinations comes from Indiana, and we find no sufficient justification for requiring any of the Illinois rates to these points to be increased until the low rates from Indiana referred to have been placed upon a level more nearly commensurate with the general level of rates in this territory."

In that proceeding several carriers, including respondent herein, introduced testimony to the effect that not only were the rates prescribed by the Illinois Commerce Commission too low, but that even the interstate rates from the Indiana mines were lower than reasonable maximum rates.

After the decision in the Illinois case, the Milwaukee proposed to reduce the rates from mines on its line in the Brazil-Clinton and Linton-Sullivan groups to the destinations here considered, to the same extent that reductions were made in the intrastate rates in Illinois. Upon protests of several carriers, and Illinois coal operators, we suspended the proposed reduced rates which constitute the issue for determination in this proceeding.

The present rates to Rockford and Freeport from the Brazil-Clinton and Linton-Sullivan groups are $1.87 and $1.92, respectively.

62 The Milwaukee proposes to reduce both of those rates 17 cents, to $1.70 and $1.75 from mines on its line, thereby again placing the rates from the Brazil-Clinton group on the parity which existed prior to August 20, 1930, with the rate from the Springfield group, and basing the rate from the Linton-Sullivan group on the present differential of 5 cents over the rate from the Brazil-Clinton group. Reductions to the level of the rates proposed to Rockford and Freeport are also proposed to intermediate destinations. In view of our finding in the Illinois case, it is obvious that prior to August 20, 1930, producers in the Indiana groups had an advantage over their Illinois competitors at the destinations here considered which the proposed reduced rates from the Indiana groups would reestablish.

In the instant proceeding respondent again testified that all of the rates from Illinois, Indiana, and western Kentucky to the destinations here considered were less than reasonable maxima, thus corroborating the testimony introduced in the Illinois case. For example, at the hearing, Mr. J. T. Averitt, coal traffic manager for the Milwaukee, testified on direct examination, in part, as follows:

"Let me say at the outset I shall not contend that the rates which are in effect from the two districts in Indiana served by our company are more than reasonable rates. As a matter of fact, they are less than reasonable maximum rates as are all the rates from Illinois, Indiana, and western Kentucky measured by any test evolved by the Commission in recent years. I do contend, however, for an equality of opportunity in these markets for the mines served by the Chicago, Milwaukee, St. Paul & Pacific Railroad, which, all conditions considered, they are entitled to have.

63 "Accordingly, rates were reduced from mines served by respondent from its Clinton and Linton, Indiana, groups in the same amount as they were required to be reduced from Illinois under orders of the Illinois Commerce Commission."

On cross-examination, Mr. Averitt testified, in part, as follows:

"Q. (By Mr. Cardy.) Mr. Averitt, as I understand it, the present rates from the Brazil-Clinton and Linton-Sullivan districts to Rockford, you say, are really less than reasonable maximum rates.

"A. I beg your pardon; I did not hear that.

"Q. I say, as I understand it, you say that even the present rates are less than reasonable maximum rates——

"A. I think that all of the rates in Illinois, Indiana, and western Kentucky, to Rockford and Freeport, are less than reasonable maximum rates."

Respondent contends, however, that by reason of the lower rates from the Illinois groups, it is being deprived of tonnage that could well move from mines on its lines in the Brazil-Clinton and Linton-Sullivan groups, which it now attempts to regain by reducing its rates from those groups, despite the fact that it has testified that the present rates are lower than reasonable maximum rates. It points out that although certain of its lines form through routes from those origin groups to Rockford and the other destinations here considered, they also afford the shortest routes from the Illinois groups in connection with other carriers, and that it is required to join in the lower intrastate rates on coal moving from mines in Illinois in competition with coal from mines on its Indiana lines on which it would perform the entire haul, and consequently receive the entire transportation charges.

64 An exhibit, as corrected at the argument, introduced by the Illinois Central Railroad Company, protestant, indicates that the volume of coal moved to Rockford in 1932 from the southern Illinois group was 42.7 percent of that moved in 1929, from the Springfield group 245 percent, from the Brazil-Clinton group 39.6 percent, and from the Linton-Sullivan group 88.1 percent, from all groups in Illinois 53.4 percent, and from all groups in Indiana 87.7 percent. The same exhibit indicates that the volume of coal moved to Rockford in 1931 from the southern Illinois group was 54.3 percent of that moved in 1929, from the Springfield group 187.7 percent, from the Brazil-Clinton group 58.4 percent, from the Linton-Sullivan group 42.5 percent, from all groups in Illinois 58.4 percent, and from all groups in Indiana 88.7 percent. The carrier used 1929 for this comparison because that was the first full year prior to the reductions in the Illinois intrastate rates. The increase in the tonnage of coal from the Springfield group to Rockford during 1931 and 1932 over the tonnage shipped in 1929 resulted from the distribution of coal for relief purposes at Rockford, which coal was purchased at mines in the Springfield group because of the low prices prevailing in that group. This exhibit was introduced for the purpose of showing that, with the exception of the coal shipped from the Springfield group to Rockford for relief purposes, the decrease in the volume of traffic from the Indiana mines to the

destinations here considered, during 1931 and 1932, compared with the 1929 traffic (the year prior to the reduction in the rates from the Illinois mines), was less than the decrease in the movement from the Illinois mines to the same destinations during the same period.

65 On the record we are of the opinion that the percentage of the tonnage from the Indiana groups to the destinations herein considered during the period shown had not decreased as a result of the reduced rates from the Illinois groups.

It appears that the distance, shown in the Illinois case, upon which the southern Illinois relation was based was the short-line distance from that group, and that the Brazil-Clinton relation was based on the average of the distances from all mines in the group. The following table, computed from distances taken from the present record, and apparently representing fairly the average of the short tariff routes from all origins on all lines in the groups, shows the percentage relations of the rates from the origin groups indicated to Rockford and Freeport to the rates for similar distances under the Holmes & Hallowell scale: [1]

Groups	To Rockford			To Freeport		
	Rate	Distance	Relation to Holmes & Hallowell scale	Rate	Distance	Relation to Holmes & Hallowell scale
		Miles	*Percent*		*Miles*	*Percent*
Springfield	$1.70	237.9	68.5	$1.70	261	63.7
Southern Illinois	2.00	365	60.9	2.00	384	58.8
Brazil-Clinton	[a] 1.87	272	68.5	[a] 1.87	304	64
Brazil-Clinton	[b] 1.70	272	62.3	[b] 1.70	304	58.2
Linton-Sullivan	[a] 1.92	298	67.1	[a] 1.92	327	63.1
Linton-Sullivan	[b] 1.75	298	61.2	[b] 1.75	327	57.6

[a] Present. [b] Proposed.

The Milwaukee objects to the use of the average distances as shown in the above table. It contends that the distances should be computed over its direct route and only from the mines on its line.

66 For example, from mines in its line in the Brazil-Clinton group, the average distance over its direct route to Rockford is 231 miles. It compares the proposed rate of $1.70 from the Brazil-Clinton group to Rockford for 231 miles with a like rate from the Springfield group to Rockford for the average distance from all origins and over all routes, in an attempt to prove that the proposed rate from the Brazil-Clinton group is higher, distance considered, than the rate from the Springfield group. Such a comparison is worthless because like things are not compared. If the short tariff distances from mines on the Illinois Central in the Springfield group were used in comparison with the distance of 231 miles from mines on the Milwaukee in the Brazil-Clinton group, the comparison would

[1] Holmes & Hallowell Co. *v.* G. N. Ry. Co., 69 I. C. C. 11.

favor the Springfield group from which the short tariff distance to Rockford is 199 miles. Such a method of computing distances would tend to destroy all groupings and cannot be adopted.

The Milwaukee urged that as the reduced rates were proposed to apply only from mines on its Indiana lines, the matter now before us relates only to the rates from those mines. It stated that whatever action may be taken by the other lines serving the two origin groups toward meeting the proposed rates would be immaterial, as approximately 95 percent of the coal moving therefrom to Rockford and Freeport moves over its lines. We do not agree with that statement, insofar as it relates to the pertinency of any action which might be taken by the other lines in the group to meet reduced rates established by the Milwaukee. The record indicates that six carriers, in addition to the Milwaukee, serve either one or both of the Brazil-Clinton and Linton-Sullivan groups. The proposal of the
67 Milwaukee, if permitted to become effective, would not only disrupt the long-existing differential relation between the several Indiana groups but it would also have the effect of splitting up the Brazil-Clinton and Linton-Sullivan groups, with lower rates from mines on the Milwaukee in these groups than from mines in the same groups and in the same immediate vicinity on the lines of other competitive carriers.

The coal-producing area in Indiana, consisting of several groups, extends southward from the Brazil-Clinton group (the so-called base group) to the Ohio River. The rates from the more-distant southern groups are based differentially over those from the Brazil-Clinton group. To the destinations here considered the rates from the Linton-Sullivan, Princeton, and Boonville groups are 5, 12, and 15 cents, respectively, higher than the rates from the Brazil-Clinton group. Stated otherwise, rates from the Linton-Sullivan group are 5 cents higher than rates from the Brazil-Clinton group; rates from the Princeton group are 7 cents higher than rates from the Linton-Sullivan group; and rates from the Boonville group are 3 cents higher than the rates from the Princeton group. This differential relation has been voluntarily established by the carriers, including respondent herein, serving the Indiana groups. The proposed reductions would increase the above differentials of 12 and 15 cents from the Princeton and Boonville groups to 29 and 32 cents, respectively, over the Brazil-Clinton group. On the other hand, if the suspended rates are permitted to become effective, and the present differential of 15 cents over Brazil-Clinton group
68 rate is maintained, the rate from the Boonville group to the destinations here considered would become 15 cents less than the rate from the southern Illinois group, although the distance is approximately 50 miles less from the latter group, thus tending to precipitate further reductions in the Illinois intrastate rates.

It is true, the rates from the more-distant southern Indiana groups are relatively lower, distance considered, than the rates from the

Brazil-Clinton and Linton-Sullivan groups, but as the trend of the traffic is to the important markets to the north and northwest of the coal-producing areas, the existing relation is apparently for the purpose of enabling producers in the more-distant southern groups to compete in these markets with producers in the northern groups. Where a group relation has existed for many years, it should not be disrupted except upon very substantial evidence of which this record is devoid. Witnesses expressed the view that if the proposed reduced rates are permitted to become effective, similar reductions will be made, for competitive reasons, by other carriers in the same groups, and that reductions will be sought also from the more-distant southern Indiana groups.

69 Referring to the proposed reductions, Mr. R. P. De Camp, general commerce agent of the Illinois Central, testified in part as follows:

"* * * I firmly believe that if these reductions are confirmed and approved by the Interstate Commerce Commission, the ink will not be dry upon the order vacating the suspension before tariffs of competing lines in the same district will be issued, making the same reductions. Why, it will only be a matter of time, as I see it, in such event, before the Princeton and the Boonville groups will follow with similar reductions. In fact, the Indiana operators on this record contend that if this reduction goes into effect from Brazil-Clinton and Linton-Sullivan mines on the Chicago, Milwaukee, St. Paul & Pacific Railroad, it should be extended to mines in the same groups in the same amount of reduction maintained from the other groups to observe the existing differences or differentials.

"Now, if that should happen, which in all probability may be, all of Indiana goes down 17 cents. How long would it be before drastic requests and strong pressure would be exerted upon Illinois roads to make a similar reduction? Now, if that were done, which is possible, it would produce lower rates to Freeport and Rockford from the large originating groups in Illinois, than apply to Chicago. * * *

* * * * * * *

"* * * I wish to say that this proceeding has, as I see it, the effect of splitting a group, in that lower rates are proposed from certain mines than from all mines. Based on years of experience, I have every reason to believe that that condition could not be maintained. Other roads serving the same groups would exert every effort possible to meet the suspended rates, if they were allowed to become effective. I do not see how, therefore, the reductions could be refused from the other Indiana groups south of these in issue. For illustration, I cannot conceive that the Chicago & Eastern Illinois Railroad, which serves the Princeton group as well as the Linton-Sullivan and Brazil-Clinton groups would sit idly by and not try to adjust their rates so as to participate competitively in the destination markets here in issue. And I have every reason to believe

that if a uniform reduction of 17 cents prevailed from the Indiana groups, which compete so keenly with the Illinois groups, it would only be a matter of time before the entire rate structure would be disrupted and unnecessarily reduced. * * *"

We have refused to find proposed reductions in rates justified when it is shown that they would be harmful to the rate structure as a whole, and therefore are also harmful to the public interest.
70 Container Service, 173 I. C. C. 377, 430. Respondent's proposal would have such an effect. In fact it would be difficult to conceive of a proposal more likely to precipitate unwarranted changes in a keenly competitive rate structure than that here proposed. The proposal, if approved, would result in a disruption of the present long-standing differential basis of rates on bituminous coal which has been voluntarily established by the carriers, including respondent, from the related Indiana groups to the destinations here considered, and would needlessly sacrifice the revenue of the carriers serving the Indiana groups, which would be harmful to the public interest. Coffee from New Orleans, 182 I. C. C. 453.

In Intrastate Rates on Bituminous Coal within Ohio, 192 I. C. C. 413, decided May 2, 1933, we commented upon the low level of the rates on coal in Illinois territory. Therein we said, at pages 427, 428:

"It was frequently referred to in this proceeding that the reduced rates in Ohio were established on the basis of the rates prescribed for application in Illinois, * * * and from Indiana to Illinois * * *. Elaborate comparisons were made between the Ohio reduced rates and those prescribed in Illinois territory. This evidence has had our consideration. It is generally conceded that the basis of rates on coal in the Illinois territory is the lowest in the country. This has greatly been brought about by a competitive condition differing from that in the Ohio territory, although some testimony was introduced to indicate that the actual operating conditions in Illinois are not more favorable than in Ohio. Chicago, in the Illinois territory, is the greatest coal market in this country, and * * * consumes annually 30,000,000 to 35,000,000 tons of coal. It was * * * stated that the rate level to Chicago is the result of keen competition between producers of eastern coal, moved both by rail and water-and-rail, and producers of Illinois and Indiana coals. Like competition also exists between carriers that have their own rails extending from particular groups in Illinois and Indiana to Chicago and whose principal interest is to move coal from their own mines. The rates to Chicago have had a depressing effect upon other rates on bituminous coal in this territory and have resulted in the establishment many years ago of a competitive basis of rates that is on a very low level."
71 In the case last cited we stated that it is generally conceded that the basis of rates on coal in the Illinois territory is the lowest in the country. In the Illinois case we stated that while a

number of the assailed Illinois intrastate rates were well below the reasonable level of rates in that territory, that also appeared to be true of most of the rates from the Indiana groups to the same destinations. In fact, in the latter case we found that the rates from the Indiana groups were somewhat lower than the rates from the Illinois groups. Despite the above finding, the Milwaukee proposes further reductions in the rates on coal from mines on its line in certain Indiana groups to the destinations here considered.

In the Illinois case we prescribed a rate of $1.95 on coal from the southern Illinois group to Chicago, Ill. Therein we found that the continuation of the reduction of 5 cents prescribed by the Illinois Commerce Commission from the Illinois groups to Chicago and a similar reduction in the interstate rates from and to those points, and from the Indiana and western Kentucky groups, would result in a net annual loss to the carriers, based on the tonnage of recent years, of more than $600,000. The record in the instant case shows that certain routes from the southern Illinois group to Rockford operate through Chicago. If the rate from the southern Illinois group to Rockford is reduced a further 17 cents, as in all probability it would be, and which protestants argue would be inevitable, it would result in a rate of $1.83 to Rockford as against a rate 12 cents higher to Chicago, an intermediate point over certain routes. Such a rate could not be maintained to Chicago without fourth-section relief. It would, however, be difficult to justify such relief
72 because Chicago is a much more important market than Rockford, and would at least be entitled to a rate no higher than the rate to Rockford. Based on the coal tonnage to Rockford in 1932 from the Illinois, Indiana, and western Kentucky fields, a 17-cent reduction would result in an annual revenue loss to the carriers approximating $48,600. Should the rate to Chicago be reduced to the level of the rate to Rockford, the net annual revenue loss to the carriers, based upon the tonnage of recent years referred to in the Illinois case, would exceed $1,400,000.

As previously pointed out, the Milwaukee seeks to establish the proposed rates of $1.70 and $1.75 not only to Rockford and Freeport but also to points on its lines in Illinois intermediate thereto.[2] It urges that any comparison of the distances and rates from the Indiana groups with those from Illinois should include such intermediate points. The average short tariff routes from all origins on all lines in the Springfield and Brazil-Clinton groups to all of the destinations named in the footnote, average 252 and 257 miles, respectively. To the last four destinations named, in the eastern portion of Illinois, the average distance from the Brazil-Clinton group, 231 miles, is less than that from the Springfield group by 11 miles. The average distances to all of the other stations named are 258 miles

[2] The principal stations on the Milwaukee between Rockford and Freeport and the Indiana border, as indicated by an exhibit of record, are Forreston, Byron, Davis Junction, Kirkland, Genoa, Elgin, Bensenville, and De Kalb, Ill.

from the Springfield group and 274 miles from the Brazil-Clinton group. To Rockford and Freeport the average distances from the Springfield group are 34.1 and 43 miles, respectively, less than those from the Brazil-Clinton group. Under the proposed rates, the
73 ton-mile revenue from the Brazil-Clinton and Linton-Sullivan groups would be 6.2 and 6 mills, respectively, to Rockford, and 5.5 and 5.3 mills, respectively, to Freeport, as compared with ton-mile revenue of 7.1 and 6.5 mills from the Springfield group to the same respective destinations. As respondent has testified that it considers the rates from Springfield as being lower than reasonable, it is difficult to perceive how it can justify the proposed reduced rates under which the revenue would be still lower than the revenue accruing under the rates from Springfield.

The stations on the Milwaukee to which the reduced rates have been proposed do not take a group rate from the Brazil-Clinton group. The rate to De Kalb is $1.74, to Rockford and Freeport $1.87, and to all other points shown in the footnote $1.80, except that to Forreston, Byron, and Davis Junction the rate is $1.87 over the circuitous route in connection with the line of the Pennsylvania Railroad Company. The Milwaukee's proposal therefore involves a reduction of 17 cents in the rates from the two origin groups to Rockford and Freeport, as compared with a reduction of 4 cents to De Kalb and 10 cents to the other intermediate points, with the exception of the rate over the circuitous route of the Pennsylvania as mentioned above.

Only the rates from mines on the Milwaukee in the Brazil-Clinton and Linton-Sullivan groups are before us in this proceeding. The immediate effect of the Milwaukee's proposal would be to split those groups, with lower rates from mines on that line than from mines on competing lines in the same groups. As hereinbefore indicated, it was testified by witnesses on behalf of protestants that this
74 condition would not long prevail, as the other carriers in those groups would, for competitive reasons, publish similar reduced rates. Such reductions would destroy the differential relations now existing as between those groups and the other Indiana groups, with the probability of mines and carriers in such other groups seeking similar reductions. The reductions here proposed if permitted to become effective would result in a level of rates from the Indiana groups lower than that which we stated, in the Illinois case, to be well below the reasonable level of rates in this territory, and would probably lead to further reductions in the Illinois intrastate rates with like reductions in the rates from western Kentucky for the purpose of preserving the differential basis over the rates from the southern Illinois group prescribed by us, thus needlessly sacrificing the carriers' revenues and impairing their ability to render adequate and efficient railway transportation service.

In Coal Trade Assn. v. Baltimore & O. R. Co., 190 I. C. C. 743, decided January 24, 1933, division 4 prescribed reasonable rates

based on distance on bituminous coal, in carloads, from the Brazil-Clinton, Linton-Sullivan, Princeton-Ayrshire, and Boonville groups in Indiana, to destinations in eastern-central Illinois, including such points as Arcola, Champaign, Decatur, Danville, Effingham, Bloomington, and Hoopeston. The basis therein prescribed applies for distances up to and including 300 miles. For 272 and 298 miles the rates are $2.07 and $2.15, respectively, as compared with the rates of $1.70 and $1.75, respectively, proposed by respondent herein for like distances from the Brazil-Clinton and Linton-Sullivan groups, to Rockford. If the rates be extended at the rate of progression shown for the two last 25-mile blocks, they, for 304 and
75 327 miles, the respective distances from the Brazil-Clinton and Linton-Sullivan groups to Freeport, would be $2.23 and $2.31, as compared with rates of $1.70 and $1.75, respectively, from the Brazil-Clinton and Linton-Sullivan groups to Freeport, proposed by respondent. The rates proposed herein would approximate 82 percent to Rockford and 76 percent to Freeport of the rates prescribed for like distances in the above case. In addition to disrupting the differential relation existing between the several Indiana groups, the proposed rates, compared with rates recently prescribed for like distances in this general territory, would be unreasonably low.

That a rate may be unreasonable because of being too low as well as because of being too high was recognized by the Supreme Court as long ago as Interstate Com. Commission v. Railway Co., 167 U. S. 479, 511.

In Ex-Ohio-River Coal to Ohio Points, 185 I. C. C. 211, proposed reduced rates on ex-river coal between points in Ohio were found not justified, chiefly because of the effects which those rates would have on the all-rail movement of coal to Ohio destinations. There the rates were not challenged as less than reasonable minima or as casting an undue burden on other traffic. Division 4 said, page 219:

"To upset or seriously to menace a general rate structure lawfully established suffices to make proposed rates calculated to effect such a disruption unreasonable and unlawful. Trunk-Line and Ex-Lake Iron Ore Rates, 69 I. C. C. 589. That principle was followed in Grain and Grain Products, 115 I. C. C. 153, with the statement that approval of the schedules there considered would inevitably lead to a disruption of the grain-rate structure, would have marked effects upon distribution and marketing, the extent of which could not be adequately foreseen, and of necessity would impair the carriers' revenues and their ability to render satisfactory service."

76 The reasonableness under section 1 of the act which we have thus the power and the duty to find in the rates here protested is supported by the provisions of section 15a. In Ex-Lake Iron Ore from Chicago to Granite City, 123 I. C. C. 503, we said:

"Plainly we are justified in condemning a rate on the ground that it is unreasonably low, where it is shown that it will cause loss rather

than gain to the publishing road or roads and will thus impose a burden upon other traffic. In suspension proceedings, in view of the burden of proof, we are justified in condemning a proposed rate, protested as too low, if the carriers which sponsor it do not sufficiently show that it will cause gain rather than loss. But our authority, in our opinion, goes further. We are justified in condemning a proposed rate as too low if the evidence warrants the conclusion that it will, because of its lowness, tend to precipitate changes in rate structure or in traffic which will be harmful to the public interest, having in mind our responsibility for railroad earnings in general under section 15a."

Under Transportation Act, 1920, there was imposed on us an affirmative duty "to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States." Railroad Commission of Wisconsin v. Chicago, B. & Q. R. R. Co., 257 U. S. 563.

That act was amended by the Emergency Transportation Act, 1933. There somewhat different language was used, as follows:

"15a. (2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service."

The new legislation made even more imperative our duty to fix rates that will enable an adequate railway service to be main-
77 tained. As to this the effect of the amended act is: "the substituted rule of rate making by its express terms emphasizes the carriers' need of adequate revenues." "The new act discloses no intention to weaken national control for essential national purposes over the railway system of the country. It was rather designed to aid that control in the light of the depressed economic condition of the railways." Florida et al. v. United States et al., decided by the United States Supreme Court, April 2, 1934.

In no. 26210, Gasoline from San Francisco Bay Points to Ogden, Utah, — I. C. C. —, decided February 6, 1934, in exercising the minimum rate power conferred on us by the act, we found certain reduced rates established by the Southern Pacific Company on gasoline from refineries on and adjacent to San Francisco Bay to Ogden, Utah, and certain intermediate points to be unjust and unreasonable, and prescribed a reasonable minimum rate.

We find that the proposed rates if permitted to become effective, would lead to a disruption of the rate structure on coal in the Indiana and related areas, thus impairing the revenue of the carriers serving those areas and their ability to provide the adequate and

efficient transportation service contemplated by section 15a of the act; that they would cause a disruption of the individual groups from which the rates are proposed; and that they would cause a disruption of the long-standing rate relation existing for competitive purposes, between the several Indiana groups.

We find that the proposed rates would be unreasonable and in violation of sections 1 (5) and 15a (2) of the act.

The findings in the original report are affirmed.

78 McMANAMY, *Commissioner*, dissenting:

As stated by the majority, the order of the Illinois Commerce Commission of August 20, 1930, reducing the rates from the southern Illinois and Springfield groups, destroyed the parity which had previously existed between the rates from the Indiana groups on the one hand and the Illinois groups on the other. Like reductions have been published from the western Kentucky group to preserve the relationship with Illinois. The rates here under suspension represent an effort on the part of the Chicago, Milwaukee, St. Paul & Pacific to retain its traffic by restoring the relationship which previously existed insofar as that carrier can do so. If, as we have found, the rates prescribed by the Illinois Commission are not unreasonably low or otherwise unlawful, I am unable to see wherein the rates here involved are unlawful.

FARRELL, *Commissioner*, dissenting:

For reasons the same in substance as those stated by me in my dissenting expression in the Gasoline Case referred to in the report, no. 26210, I am unable to concur in the conclusions of the majority. The pertinent facts do not appear to me to establish a violation of paragraph (5) of section 1 of the Interstate Commerce Act, and therefore cannot indicate a violation of paragraph (2) of section 15a of the act, because the latter paragraph covers only matters to be considered by the Commission in prescribing just and reasonable rates to take the place of those it finds to be unreasonable, upon such record as may be made in the full hearing provided for in paragraph (1) of section 15 of the act.

79 The fact that the reductions in rates proposed by the Milwaukee will interfere with group adjustments heretofore made by and between carriers serving Indiana mines does not appear to me to be a sufficient reason for denying to the Milwaukee the right it would otherwise have under the act. Also, it will be observed that the Milwaukee is simply endeavoring to reestablish, as between mines on its lines in Indiana on the one hand and mines in the Springfield, Illinois, group on the other, the parity of rates which existed during many years prior to August 20, 1930, and that subsequent to the date mentioned the carriers serving mines in western Kentucky were permitted to make a like readjustment.

80 ORDER

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 18th day of April, A. D. 1934

Investigation and Suspension Docket No. 3843

Coal from Indiana to Illinois

It appearing that on November 8, 1933, the Commission, division 2, made and filed its report and entered its order in the above-entitled proceeding; that the effective date of said order was subsequently postponed until April 23, 1934; that by order entered March 7, 1934, the Commission reopened said proceeding for oral argument and reconsideration; and that the Commission has, on the date hereof, made and filed its report on argument and reconsideration in said proceeding containing its findings of fact and conclusions thereon, which said report and said prior report of November 8, 1933, are hereby referred to and made parts hereof:

It is ordered that the aforesaid order heretofore entered in said proceeding on November 8, 1933, as since amended, which by its present terms requires cancellation of the suspended schedules on or before April 23, 1934, be, and it is hereby, affirmed.

By the Commission.

[SEAL] GEORGE P. MCGINTY,
Secretary.

81 In United States District Court for the Northern District of Illinois, Eastern Division

In Equity, No. 13726

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, PLAINTIFF

vs.

UNITED STATES OF AMERICA, DEFENDANT

Memorandum opinion

June 13, 1934

On the fourteenth day of February, A. D. 1934, Chicago, Milwaukee, St. Paul & Pacific Railroad Company filed its bill of complaint herein praying that a preliminary or interlocutory order or injunction be entered restraining and suspending the enforcement, operation, and execution of an order of the Interstate Commerce

Commission by division 2, dated the eighth day of November, A. D. 1933, Investigation and Suspension Docket No. 3843 cancelling certain proposed tariffs on bituminous coal filed with the Commission by the plaintiff and that defendant, United States of America, its officers and agents be enjoined and restrained from enforcing said order until the final determination of this case, and that upon final hearing herein a decree be entered perpetually enjoining, suspending, annulling, and setting aside the enforcement, operation, and execution of said order.

82 Following the filing of the bill of complaint the Commission postponed the effective date of said order until April 23, 1934. On March 7, 1934, the Commission reopened said proceedings for oral argument and consideration and on the eighth day of April the Commission made and filed its report with its findings of fact and conclusions thereon and ordered that the order theretofore entered on the eighth of November 1933 be affirmed. These subsequent proceedings by the Commission were brought to the attention of the court by a supplement to the original bill herein. Answers have been filed by the original defendant and intervenors, briefs and arguments submitted, and the cause submitted to the court for final determination.

On the twenty-second day of November 1933, the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, plaintiff, filed tariffs with the Interstate Commerce Commission to become effective on the twenty-third day of December 1932, which fixed rates of $1.70 per ton on bituminous coal from mines on its railroad in Clinton district, located in Vermillion and Bigo Counties in the State of Indiana to various destinations located on its railroad in northern Illinois, including Rockford and Freeport, and also fixed rates of $1.75 per ton on bituminous coal from mines on its railroad in the Linton district located in Vigo, Sullivan, Greene, and Clay Counties in the State of Indiana to each of said destinations in northern Illinois, said rates of $1.70 and *$175* per ton, respectively, constituting reductions of ten cents per ton under the rates theretofor in effect from said Clinton and Linton districts in Indiana to eight of the said destinations, reductions of four cents per ton to five

83 of the destinations, and seventeen cents per ton to the remaining destinations, including Rockford and Freeport; that prior to the effective date of said tariffs certain associations representing coal-producing interests in Illinois and certain railroads serving coal mines in Illinois and the Illinois Commerce Commission filed protests with the Commission against the said tariffs and asked the Commission to institute a proceeding inquiring into the lawfulness of the proposed rates and tariffs; that on the twenty-second day of December 1932 the Commission entered its order suspending the operation of said proposed tariffs until the twenty-third day of July 1933, and have since entered an order cancelling such tariffs.

It appears from the evidence taken before the Commission that for many years prior to the twentieth day of August 1930 plaintiff was engaged in the transportation of bituminous coal from the mines in said mining district in Indiana to destinations in Illinois, including Rockford and Freeport, and that the rates applicable for movement of said coal from said Clinton district in Indiana to Rockford, Illinois, from the first day of April 1913 to the twentieth day of August 1930 were the same as rates from the so-called "Springfield group" in Illinois to Rockford, Illinois; that in a certain proceeding pending before the Illinois Commerce Commission said commission by an order which became effective on the twentieth day of August 1930 reduced the rates on bituminous coal moving intrastate from the origin mines in Illinois to Rockford and Freeport, seventeen cents per ton; that subsequently in a proceedings before the Interstate Commission under section 13 of the Interstate Com-

84 merce Act in which it was urged that the rates required by the Illinois Commerce Commission to be assessed as maxima for the transportation of coal from mines in that said district to Rockford and Freeport, Illinois, were unlawful and caused undue and unreasonable advantage, preference, and prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other hand and as unjustly and unreasonably discriminating against interstate commerce, a hearing was had before the Interstate Commerce Commission and said Commission (182 I. C. C. 537) refused to require the said Illinois intrastate rates to be increased. It found in that case that the rates fixed by the Illinois Commerce Commission for the hauling of bituminous coal to Rockford and Freeport should not be found unlawful under section 13 of the act until and unless the interstate rates from the Indiana groups (including the Brazil-Clinton and Linton-Sullivan groups) to the same destinations were increased to a level more nearly commensurate with the general level of the rates on coal in this territory (p. 564).

In the hearing under consideration in this ca'e on the proposed rates of the Milwaukee, while it was admitted that its present rates are below a reasonable maximum, there was no evidence presented that such rates were below a reasonable minimum nor that they were noncompensatory. The Commission based its final order solely upon findings that "the proposed rates, if permitted, to become effective would lead to a disruption of the rate structure on coal in Indiana and related areas, thus impairing the revenue of the carriers serving these areas and their ability to provide the adequate and

85 efficient transportation contemplated by section 15 (a) of the act; that they would cause a disruption of the individual groups from which the rates are proposed; and they would cause a disruption of the long-standing rate relations existing for competitive purposes between the several Indiana groups", and that the

proposed rates would be unreasonable and in violation of section 1 (5) and 15a (2) of the act.

There seems to be no question but that the Milwaukee is in a position to serve the mines in the Brazil-Clinton and Linton-Sullivan groups which are on its lines at a much cheaper rate than other carriers whose lines touch coal mines in the same vicinity and more cheaply that the lines in Illinois can carry coal from the northern Illinois and Springfield groups to Rockford and Freeport. The protestants, in the hearing before the Commission, made no attempt to show that the proposed rates of the Milwaukee were unreasonable low for the service given. The sole contention of the protestants was that the lower rates proposed by the Milwaukee would disrupt the general rate structure on coal from the various mining groups in Indiana, Kentucky, and southern Illinois. To support this contention they produced as a witness one R. R. De Camp, general commerce agent of the Illinois Central Railroad, who testified that he firmly believed that if the proposed reduction in rates by the Milwaukee were confirmed and approved by the Commission, before the ink would be dry upon the order vacating the suspension of the proposed rates of the Milwaukee new tariffs of competing lines in the same district would be issued making the same reduction, and if that should happen all of Indiana would go down seventeen
86 cents; further, that he had every reason to believe that if a uniform reduction of seventeen cents prevailed from the Indiana groups which compete so keenly with the Illinois groups it would be only a matter of time before the entire rate structure would be disrupted and unnecessarily reduced.

We do not feel that a mere belief of a witness as to what may happen in the future, even if he be an expert, is entitled to much weight as evidence. The belief in this case does not appear to have been founded upon facts or scientific observation as is required of an expert in any other line before his opinion becomes competent. The finding of the Commission, however, appears to be based solely upon such expressions as to the future effect of the proposed rates of the Milwaukee.

The Commission finds, as stated above, that the proposed rates of the Milwaukee are in violation of section 1 (5) and 15a (2) of the Interstate Commerce Act, section 1 (5) provides simply that "all charges made for any service rendered or to be rendered in the transportation of passengers or property * * * shall be just and reasonable." There is no evidence that the proposed rates in and of themselves are unreasonable. The carrier has a right to initiate rates. United States v. Illinois Central Railroad Co., 263 U. S. 516. There is no presumption that a rate so initiated is unreasonably low. On the contrary the burden is upon the party complaining to establish that fact, and in the absence of evidence the initiate rate must stand. Anchor Coal Co. v. United States, 25 F. (2) 462.

87 A reduction by the Milwaukee of the coal rates will, other things being equal, benefit both the consumers of coal at the points of destination and the producers of coal at the points of origin, and as said by the court in Texas and Pac. Ry. Co. v. United States, 289 U. S. 627, 638, "The act was passed for the protection of those who pay or bear the rates."

Further, the Milwaukee has the right within the zone of reasonableness to adopt such rates as will enable it to obtain or retain desired traffic for its own lines. Texas and Pac. Ry. Co. v. United States, supra. It has a through line from coal mines in the Brazil-Clinton and Linton-Sullivan groups to Rockford, Freeport, and certain intermediate destinations. It has adopted a rate which will enable those mines to undersell in the destinations mentioned, coming from mines not so favorably situated, with the result that the Milwaukee will derive a greater revenue and the buyers of coal at those destinations will obtain that commodity at a lower price. In the absence of evidence that the proposed rate is not compensatory or below a reasonable minimum there is nothing in section 1 (5) of the act which justifies the Commission in setting it aside.

There still remains the question whether the order of the Commission is authorized by section 15 a (2). It is on this section the Commission and the defendants herein seem principally to rely. The reason, and the only reason, given for cancelling the proposed rates is that a rate war would likely result and the present rate structure would be disrupted. As a matter of fact the rate structure was disrupted when in 1930 the Commerce Commission per-
88 mitted reductions from the mines in Springfield and southern Illinois to Freeport, Rockford, and intermediate destinations.

There is no evidence in the record that the present rate structure is fair or that it is reasonable; no evidence that its disruption would necessarily lead to the introduction of unfair or unreasonable rates. Further, that situation is within the control of the Commission. It is not necessary that it sanction other changes of rates, if such new rates are below a reasonable minimum, or are noncompensatory.

Section 15 a (2) of the act as amended in 1933 provides that the Commission, in the exercise of its power to prescribe just and reasonable rates, shall give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with furnishing such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service. There is no evidence that the proposed rates of the Milwaukee will interfere with adequate and efficient railway service. Some mention was made in the evidence of the fact that some mines in the Brazil-Clinton and Sullivan-Linton districts, a very small proportion of all the mines in the two districts, are not located so they can be served by

the Milwaukee but have to depend on other lines of railroad which would have to carry the coal by a much longer route and through other connecting carriers to deliver it to Rockford, Freeport, and other destinations involved in this proceeding. But we do not understand the act to mean that the Commission should compel a
89 carrier to charge a rate higher than a reasonable minimum, and compel shippers favorably located to pay such higher rates in order to favor other mines less favorably located or to increase the revenue of other carriers having a less direct route to the destinations involved.

Defendants have called our attention to Jefferson Island Salt Mining Co. v. United States, 6 F. (2d) 315 as supporting their contentions, stating that is the only direct decision on the question of the power of the Commission to prescribe minimum rates, even in the absence of evidence that the existing rate which that minimum required to be increased was noncompensatory or in itself unreasonably low from the carrier's viewpoint. But that case was decided under section 15a (2) as it stood after the amendment of 1920, and it was very considerably changed by the amendment of 1933. As it stood in 1920 the Commission was authorized to initiate, modify, establish, or adjust rates so that carriers as a whole (or as a whole in each of such rate groups as the Commission might from time to time designate) would under honest, efficient, and economical management earn an annual net operating income equal as near as might be to a fair return upon the aggregate value of the railway property of such carriers held for and used for in the service of transportation. There is nothing in the section as it now stands authorizing the Commission to establish rates above a reasonable minimum for one railroad merely to enable another railroad in the group not so well situated, to earn a fair return, even if the act of 1920 did so provide. Nor is there any evidence in the record that the proposed rates of the Milwaukee if allowed to stand will so affect the earning capacity of any other railroad.

It is our opinion that the order of the Commission
90 should be perpetually enjoined.

EVAN A. EVANS,
U. S. Circuit Judge.
JOHN P. BARNES,
U. S. District Judge.
WILLIAM H. HOLLY,
U. S. District Judge.

91 In United States District Court for the Northern District of Illinois, Eastern Division

In Equity No. 13726

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

Findings of fact and conclusions of law

June 13, 1934

Having heard the parties and their counsel, the court being advised in the premises makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

I. Plaintiff is a carrier that owns and operates lines of railroad in the States of Indiana, Illinois, Wisconsin, and certain other States, and is engaged in both interstate and intrastate transportation.

II. On November 22, 1932, plaintiff filed tariffs to become effective December 23, 1932, fixing rates of $1.70 per ton on bituminous coal from mines on its railroad in the Clinton district in Indiana, to thirty-eight destinations on its railroad in northern Illinois, including Rockford, Freeport, Elgin, and DeKalb, Illinois, and also fixing rates of $1.75 per ton on bituminous coal from mines on its railroad in the Linton district in Indiana, to the same destinations, which said proposed rates constituted reductions of from four to seventeen cents per ton under the then existing rates. On December 22, 1932, the I. C. C. entered an order suspending the operation of said proposed tariffs until July 23, 1933, and subsequently the effective date of the said schedules and tariffs was further postponed until April 23, 1934.

92 III. Effective August 20, 1930, the Illinois Commerce Commission reduced the intrastate rates on bituminous coal from origin points in Illinois, to Rockford and Freeport, Illinois, seventeen cents per ton. The Interstate Commerce Commission, in docket no. 23130, a proceeding under section 13 of the Interstate Commerce Commission Act, in which it was charged and alleged that the rates required by the Illinois Commerce Commission to be assessed as maxima for the transportation of coal within Illinois from mines in that State to Rockford and Freeport, Illinois, were unlawful, preferential, and prejudicial, as between persons and localities in intrastate commerce on the one hand, and interstate commerce on the other, and unreasonably discriminatory against interstate commerce, refused to require said intrastate rates to be increased. Following

the report and decision of the Interstate Commerce Commission in said docket no. 23130, the rates on bituminous coal from western Kentucky to said destinations in northern Illinois, were permitted by the Interstate Commerce Commission to be reduced so as to restore the relationship which existed between the rates from western Kentucky and Illinois, respectively, to said destinations in northern Illinois, prior to the order of the Illinois Commerce Commission, effective August 20, 1930. Plaintiff thereupon filed its proposed schedule of rates on bituminous coal from mines located on its railroad in Indiana to the destinations named in northern Illinois, which said proposed schedules would have restored the relationship which had existed for many years prior to August 20, 1930, between the rates from the said Indiana mines to the destinations named and the rates from Illinois mines to the same destinations.

IV. Plaintiff has a single line of railroad from mines on its railroad in Indiana to said destinations in northern Illinois, and has for many years transported a large volume of coal from said Indiana mines to said Illinois destinations, which said volume of coal
93 has been materially diminished since the reduced intrastate rates prescribed by the Illinois Commerce Commission for substantially the same haul and for relatively equal service, mileage considered, became effective. The volume of coal traffic from the Clinton group in Indiana to Rockford, Illinois, in 1932, was 39.6 percent of the 1929 volume, and from the Springfield group in Illinois to Rockford, Illinois, in 1932, was 245 percent of the 1929 volume; and the aforesaid reduction in volume of coal moving from the Clinton group in Indiana to Rockford, Illinois, was due, in part, to the disparity in rates brought about by the reduced intrastate rates prescribed by the Illinois Commerce Commission.

V. The rates which plaintiff is required to charge for the transportation of coal from the Indiana origin points named to the destinations in northern Illinois, via its said single line, are relatively higher, distance considered, than the rates in which plaintiff is compelled to join with other railroad companies for the movement of coal from Illinois mines to the same destinations.

VI. The rates proposed by plaintiff in the tariff ordered to be canceled are relatively higher, distance considered, than the rates in which plaintiff is compelled to join with other railroads for the movement of coal from Illinois mines to the destinations of northern Illinois.

VII. Plaintiff transports over its single line short route from said Linton and Clinton districts in Indiana to said destinations in Illinois, approximately 95 percent of the coal moving from said origin groups in Indiana to said destinations in Illinois, while all other carriers serving said origin groups in Indiana transport only approximately 5 percent of the coal moving from said origin groups in Indiana to said destinations in Illinois.

VIII. Plaintiff had duly invoked and had exhausted all its rights and remedies at law before seeking relief in equity.

94 IX. The order of the Interstate Commerce Commission which is here attacked is unfair and discriminates against the plaintiff.

CONCLUSIONS OF LAW

I. That the order of the Interstate Commerce Commission of November 8, 1933, as affirmed April 18, 1934, is not supported by substantial evidence.

II. That there was no substantial evidence in the record to justify a finding by the Interstate Commerce Commission that the rates proposed were unlawful in violation of the Interstate Commerce Act.

Plaintiff is entitled to a decree perpetually enjoining the enforcement of the order of the Commission.

EVAN A EVANS,
Circuit Judge.
JOHN P. BARNES,
District Judge.
WILLIAM H. HOLLY,
District Judge.

95 In United States District Court for the Northern District of Illinois, Eastern Division

In Equity No. 13726

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, plaintiff

v.

UNITED STATES OF AMERICA, DEFENDANT, AND INTERSTATE COMMERCE Commission et al., intervening defendants

Final decree

June 21, 1934

On the twentieth day of April 1934, this cause came on to be heard on plaintiff's application for a permanent injunction, and all parties being present by counsel, the court, after hearing the evidence and the arguments of counsel and considering the briefs filed, and being fully advised in the premises, finds the law and the facts to be as contained in the memorandum opinion, the findings of fact, and conclusions of law filed herein on June 13, 1934, and further finds that the interlocutory injunction heretofore entered on the twentieth day of April 1934 shall be made permanent.

It is therefore ordered, adjudged, and decreed by the court that the interlocutory injunction entered herein on the twentieth day of
96 April 1934 be, and the same is hereby, made permanent, and that the defendants, United States of America and the Interstate Commerce Commission, and each of them, their officers, attorneys, agents, and employes be, and they are hereby, permanently enjoined and restrained from enforcing or in any manner attempting to enforce or carry out the order of the Interstate Commerce Commission entered in Investigation and Suspension Docket No. 3843, Coal from Indiana to Illinois, dated November 8, 1933, and reaffirmed on April 18, 1934.

EVAN A. EVANS,
United States Circuit Judge.
JOHN P. BARNES,
United States District Judge.
WILLIAM H. HOLLY,
United States District Judge.

Approved as to form:

ELMER B. COLLINS,
Special Assistant to the Attorney General.
EDWARD M. REIDY,
Assistant Chief Counsel, Interstate Commerce Commission.
WALTER MCFARLAND,
GUY A. GLADSON,
ELMER A. SMITH,
J. T. QUISENBERRY,
Solicitors for Intervening Railroads.
GALLAGHER, RINAKER, WILKINSON & HALL,
Solicitors for Binkley Mining Co. et al., Interveners.

96a In United States District Court

[Title omitted.]

Stipulation re supplemental pleadings

Filed August 6, 1934

It is hereby stipulated and agreed between the parties that when the above cause came on for final hearing before the specially constituted court on April 20, 1934, petitioners orally made a motion that the bill of complaint theretofore filed attacking the Commission's order of November 8, 1933, be treated and considered as a supplemental bill of complaint attacking also the Commission's supplemental report and order of April 18, 1934, which said report and order were then and there offered and received in evidence. Such motion was granted by the court.

Thereupon defendants and intervening defendants at the same time orally made a motion that the answers theretofore filed to the original bill of complaint be treated and considered as their answers to the supplemental bill. Such motion was granted by the court.

Dated August 6, 1934.

96b Elmer B. Collins, Special Assistant to the Attorney General, for the United States of America. Daniel W. Knowlton, E. M. Reidy, for the Interstate Commerce Commission. H. H. Larimore, Walter McFarland, Elmer A. Smith, John T. Quisenberry, for intervening railroad defendants. Carson L. Taylor, E. B. Wilkinson, for petitioners, appellees.

Approved August 6, 1934.

WALTER C. LINDLEY,
U. S. District Judge.

97 In United States District Court

Order designating judge

Public business requiring, I hereby designate and assign the Honorable Walter C. Lindley, United States District Judge for the Eastern District of Illinois, to hold United States District Court in the Northern District of Illinois during the present term.

SAMUEL ALSCHULER,
Senior United States Circuit Judge in and for the Seventh Judicial Circuit.

CHICAGO, ILLINOIS, *July 2, 1934.*

98 In United States District Court

[Title omitted.]

Stipulation re transcript of record

Filed August 6, 1934

On the hearing of the application for a permanent injunction, the petitioners offered in evidence a certified full copy of the transcript of the record of the evidence and proceedings before the Interstate Commerce Commission in the proceeding entitled "I. & S. Docket No. 3843, Coal from Indiana to Illinois", consisting of a total of 239 pages of the oral testimony of the witnesses and 45 exhibits, and the same having been received in evidence by the court, and the defendant and intervening defendants having seasonably filed and served a condensed narrative of the transcript of the evidence and proceedings for the determination of the appeal; and now, for the purpose of reducing and settling the record on appeal pursuant to

equity rule 75, the parties by their respective counsel (and with the approval of the court) stipulate:

(1) The within and attached narrative is a true and correct transcript in narrative form of all of the oral testimony introduced
99 at the hearing before the Commission as the same is contained in the official typewritten transcript of the proceedings referred to.

(2) The narrative shall be substituted for the original transcript of the oral testimony so certified by the Commission, and shall be incorporated in the record on appeal and shall have the same force and effect upon the appeal as the original testimony.

(3) The exhibits in the certified copy of the transcript, which were introduced at the hearings before the Commission, nos. 1 to 44, inclusive, and one unnumbered exhibit, shall be incorporated and printed in the record on appeal in their entirety, and shall have the same force and effect upon the appeal as the original exhibits.

Dwight H. Green, United States Attorney; Harold M. Stephens, Assistant Attorney General; Elmer B. Collins, Special Assistant to the Attorney General; for the United States of America. Daniel W. Knowlton, E. M. Reidy, for the Interstate Commerce Commission. H. H. Larimore, Walter McFarland, Elmer A. Smith, J. T. Quisenberry, for Intervening Railroad Defendants. Carson L. Taylor, E. B. Wilkinson, for Plaintiff-Appellees.

Done this 6th day of August, 1934.

Order

It is ordered, That the within and attached stipulation and narrative be, and the same are hereby, approved; and in preparing, certifying, and transmitting the transcript of the record to the Supreme Court of the United States the clerk is directed to proceed in accordance therewith.

WALTER C. LINDLEY,
United States District Judge.

CHICAGO, ILLINOIS, *August 6, 1934.*

101 And on, to wit, the 6th day of August 1934, came the defendants by their attorneys and filed in the clerk's office of said court a certain narrative statement of evidence and other documents submitted to the Commission and introduced in the district court, in words and figures following, to wit:

102 Interstate Commerce Commission, Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the schedule hereto attached is a

true copy of Supplement No. 76 to Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Local, Joint and Proportional Commodity Tariff, I. C. C. No. B–5133, said schedule having been filed with the said Interstate Commerce Commission on November 22, 1932.

In witness whereof I have hereunto set my hand and affixed the seal of said Commission this 12th day of February, A. D., 1934.

[SEAL] GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

103 Supplement No. 76 to I. C. C. No. B–5133. Cancels Supplement No. 75. Supplements Nos. 48, 61, †64, 73, 74, and 76 contain all changes from the original tariff that are effective on the date hereof.

Supplement No. 76 to C., M., St. P. & P. & P. G. F. D. No. 15200–B. Cancels Supplement No. 75. Supplements Nos. 48, 61, 64 (†special supplement providing for application of emergency charges), 73, 74 and 76 contain all changes from the original tariff that are effective on the date hereof.

Chicago, Milwaukee, St. Paul and Pacific Railroad Company

In connection with lines shown on page 3 of Tariff, as Amended

Supplement to local, joint, and proportional commodity tariff naming rates on Bituminous Coal, Carloads, from Mines in Indiana on Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Terre Haute Division) (as shown on page 4 of Tariff, as amended), to stations on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company and connecting lines in Illinois, Iowa, Kansas, Michigan (Upper Peninsula), Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin.

Issued November 21, 1932. Effective December 23, 1932. (Except as otherwise provided herein.)

Departure from the terms of Rule 9 (e) of Tariff Circular No. 20 is authorized under special permission of the Interstate Commerce Commission No. 119220, of October 7, 1932.

Note A.—Departure from the terms of the amended fourth section of the Interstate Commerce Act is permitted by authority of Interstate Commerce Commission Fourth Section Order No. 10433 of July 29, 1930.

Issued by M. F. Edbrooke, asst. general freight agent, 516 W. Jackson Blvd., Chicago, Ill.; J. T. Averitt, coal traffic manager, Chicago, Ill.; O. T. Cull, general freight agent, Chicago, Ill.

(H.V.S.)

Supplement No. 76 to G. F. D. No. 15200–B.

103A [Supplement No. 76 to C., M., St. P. & P. G. F. D. No. 15200-B]

Supplement No. 76 to individual carriers' tariff numbers

Name of carrier	Tariff no.
Chicago and Eastern Illinois Railway	1917-A.
Chicago, Rock Island and Pacific Railway Company	28145-F.
Great Northern Railway	2029-B.
Illinois Central Railroad	Coal Tariff 3035-B.
Northern Pacific Railway Company	3485-B.
Union Pacific Railroad	1028-B. File 47.

Item no. 1-D cancels item no. 1-C.

Alphabetical list of stations from which rates named herein apply

Stations	District	Stations	District
Beehunter, Ind	Eliminate. Mines abandoned.	Meeks, Ill	Eliminate. Mines abandoned.
Blackhawk, Ind	Linton.	Midland, Ind	Eliminate. Mines abandoned.
Blanford, Ind	Clinton.	New Goshen, Ind	Eliminate. Mines abandoned.
Bradshaw, Ind	Clinton.	Quaker, Ill	Eliminate. Mines abandoned.
Coalmont, Ind	Linton.	Randall, Ind	Eliminate. Mines abandoned.
Humrick, Ill	Eliminate. Mines abandoned.	St. Bernice, Ind	Clinton.
Hymera, Ind	Linton.	Spring Hill, Ind	Eliminate. Mines abandoned.
Ilene, Ind	Linton.	Sullivan, Ind	Linton.
Jasonville, Ind	Eliminate. Mines abandoned.	Terre Haute, Ind	Clinton.
Keller, Ind.[1]	Linton.[1]	Vicksburg, Ind	Linton.
Latta, Ind	Linton.	West Clinton, Ind	Clinton.
Lewis, Ind	Eliminate. Mines abandoned.	West Dana, Ind	Eliminate. Mines abandoned.
Linton, Ind	Linton.		

[1] Reduction.

Item no. 10-B cancels item no. 10-A.

Commodities Taking Bituminous Coal Rates

Except as otherwise specifically provided, rates named in Tariff, as Amended, on Bituminous Coal, other than Pea; Slack, Screenings, or Fine Coal, will also apply on blacksmith coal or smithing coal, and coal briquettes manufactured from hard coal, soft coal, or mixture of hard and soft coal (from which no byproducts have been extracted), pressed into forms by use of a binder.

Rates shown in tariff, as amended, applicable on pea, slack, screenings, or fine coal, will be governed as to description by the following clause, viz: "Rates apply only on bituminous coal which will pass through bar screen not exceeding one and one-half (1½) inches between bars or its equivalent, a two-inch mesh or a two-inch round perforation."

Reissued from Supplement No. 75, effective December 17, 1932.

Item no. 17-A cancels item no. 17.

Furnishing of Larger Coal Cars for Carriers' Convenience when Smaller Cars are Ordered by Shippers

When shipper orders a car of certain weight carrying capacity, and a car of greater weight carrying capacity is furnished for the convenience of this carrier, freight charges will be assessed on the basis of the actual weight of the load, but not less than the minimum carload weight applicable to a car of the size or capacity ordered.

In no case must shipments be billed at minimum weight prescribed for car of less capacity than 80,000 pounds.

Orders will not be accepted for cars of less capacity than 80,000 pounds.

Expires with December 31, 1933, unless sooner cancelled, changed, or extended.

Reissued from Supplement No. 75, effective January 1, 1933.

Index of points to which rates apply

Index of stations to which rates named herein apply is as shown on pages 6 to 49, inclusive, of Tariff, as Amended, except:

Station	Road	Index no.	Station	Road	Index no.
Evanston, Iowa	C. G. W.	(1)	Lehigh, Iowa	C. G. W.	(1)
Evanston, Iowa	Ft. D. D. M. & S.	6337			

[1] Eliminate.

103B *Supplement No. 76 to C. M. St. P. & P. G. F. D. No. 15200-B*

Rates named in this supplement supersede rates named in tariff appearing on pages 50, 51, 71, 78, 80, 90, and 91, and pages 10, 12, and 20 of Supplement No. 48 and pages 5 and 9 of Supplement No. 73, from and to stations bearing corresponding index numbers:

[Rates in cents per ton of 2,000 pounds]

Index no.	To—	From districts (see page 4 of tariff, as amended)		Route (see page 120 of tariff as amended)
		Clinton	Linton	
	Chicago, Milwaukee, St. Paul and Pacific R. R.			
263	Bensenville, Ill.	[3] 170	[3] 175	A
264	Wooddale, Ill.[1]			
265	Itasca, Ill.			
266	Roselle, Ill.			
267	Ontarioville, Ill.			
268	Bartlett, Ill.			
269	Spaulding, Ill.			
270	Hammonds, Ill.[1]			
275	Elgin, Ill.	[3] 170	[3] 175	A, B
276	Almora, Ill.[1]			
277	McQueen, Ill.[1]			
278	Pingree Grove, Ill.			
279	Starks, Ill.[1]			
280	Hampshire, Ill.			
281	New Lebanon, Ill.			
282	Genoa, Ill.	[3] 170	[3] 175	A, B
283	Kingston, Ill.			
284	Kirkland, Ill.			
285	Fairdale, Ill.			
286	Monroe Center, Ill.			
287	Davis Junction, Ill.			
288	Stillman Valley, Ill.	[3] 170	[3] 175	A, B
289	Byron, Ill.			
290	Leaf River, Ill.			
291	Adeline, Ill.			
292	Forreston, Ill.			
293	Harper, Ill.			
377	Rockford, Ill.	[3] 170	[3] 175	A, B
383	Freeport, Ill.	[3] 170	[3] 175	A, B
384	Florence, Ill.			
385	Shannon, Ill.			
	Chicago & North Western Ry.			
[73] 3411	Morse Bluff, Neb.	[3] [4] 389 / [5] 370	[3] [4] 399 / [5] 380	[14] D
[73] 3412	Linwood, Neb.			
[73] 3413	Abie, Neb.			
[73] 3414	Bruno, Neb.			
[73] 3415	Brainard, Neb.[1]			
[73] 3416	Dwight, Neb.			
[73] 3417	Bee, Neb.			
[73] 3418	Seward, Neb.			
[73] 3433	Octavia, Neb.	[3] [4] 411 / [5] 370	[3] [4] 421 / [5] 380	[14] D
[73] 3434	David City, Neb.			
[73] 3478	Snyder, Neb.	[3] [4] 422 / [5] 370	[3] [4] 432 / [5] 380	[14] D
[73] 3479	Dodge, Neb.			
[73] 3480	Howells, Neb.			
[7] [3]481	Clarkson, Neb.	[4] 425 / [5] 370	[4] 435 / [5] 380	[14] D
[73] 3482	Leigh, Neb.			
[73] 3483	Creston, Neb.			
[73] 3484	Humphrey, Neb.			

Index No.	To—	From districts (see page 4 of tariff, as amended)		Route (see page 120 of tariff as amended)
		Clinton	Linton	
	Chicago Great Western R.R			
[73] 3916	Wilkinson, Ill.	180	185	A
[73] 4110	Evanston, Iowa	[71]	[71]	
[73] 4111	Lehigh, Iowa			
	Chicago, Milwaukee, St. Paul and Pacific R. R.			
4280	Nichols, Ill.[1]	[3] 170	[3] 175	A
4281	Wilkinson, Ill.			
4282	Bradt, Ill.[1]			
4283	De Kalb, Ill.			
4284	Chase, Ill.[1]			
4285	Troxel, Ill.			
4286	Duffin, Ill.			
	Fort Dodge, Des Moines & Southern R. R.			
[73] 6337	Evanston, Iowa	[4] 346 / [5] 316	[4] 356 / [5] 326	A, B
	Union Pacific R. R.			
[73]10926	Loma, Neb.	[3] [4] 389 / [5] 370	[3] [4] 399 / [5] 380	A
[73]10927	Brainard, Neb.			
[73]10928	Yanka, Neb.[1]	[3] [4] 411 / [5] 370	[3] [4] 421 / [5] 380	A
[73]10929	David City, Neb.			
[73]10964	Ames, Neb.	[3] [4] 400 / [5] 370	[3] [4] 410 / [5] 380	A
[73]10965	North Bend, Neb.			
[73]10966	Bay State, Neb.[1]			
[73]10967	Rogers, Neb.			
[73]10968	Schuyler, Neb.			
[73]10969	Lambert, Neb.[1]	[3] [4] 411 / [5] 370	[3] [4] 421 / [5] 380	A
[73]10970	Richland, Neb.			
[73]10971	Columbus, Neb.			
[73]10972	Sheldon, Neb.	[3] [4] 422 / [5] 370	[3] [4] 432 / [5] 380	A
[73]10973	Oconee, Neb.			
[73]10974	Platte Center, Neb.			
[73]10975	Tarnov, Neb.	[4] 425 / [5] 370	[4] 435 / [5] 380	A
[73]10976	Humphrey, Neb.			
[73]10977	Peck, Neb.[1]			
[73]11978	Madison, Neb.			
[73]10979	Enola, Neb.			
[73]10980	Warnerville, Neb.[1]			
[73]10981	Norfolk, Neb.			

[1] No agent. Freight charges must be prepaid.
[2] Reduction.
[3] Issued in conjunction with decision and order of the Interstate Commerce Commission in Dockets 18025 and 17330-Sub. 1, of February 11, 1930, as amended. Will not apply from or to intermediate points (see note A on title page of tariff, as amended).
[4] Rates apply on coal, other than Fine Coal.
[5] Rates apply on fine coal. (For application, see item 10 of tariff, as amended.)
[14] Route via Chicago, Ill., cancelled.
[71] Cancel. Stations abandoned.
[73] Reissued from Supplement No. 75, effective Dec. 9, 1932.

104 Interstate Commerce Commission

Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Protest of Illinois Coal Traffic Bureau, filed December 13, 1932,

Protest of the Consolidated Coal Company of St. Louis, filed December 14, 1932,

Protest of Springfield Illinois Coal Traffic Bureau, filed December 15, 1932,

Order of the Commission entered December 22, 1932,

Transcript of the stenographer's notes of the hearing held February 20 and 21, 1933, at Chicago, Illinois, before Examiner Trezise and of exhibits filed at said hearing,

Report and order of the Commission filed and entered November 8, 1933,

Order of the Commission entered November 8, 1933,

Petition for rehearing, reargument, and reconsideration before the entire Commission and for an extension of the effective date of the order, filed January 3, 1934,

Order of the Commission entered January 5, 1934, and

Order of the Commission entered February 5, 1934,

in Investigation and Suspension Docket No. 3843, Coal from Indiana to Illinois, the originals of which are now on file and of record in the office of this Commission.

I further certify that the documents and papers above referred to constitute a true copy of the record (except briefs, report proposed by examiner, exceptions, transcript of oral argument, replies to petition for rehearing, and correspondence) in Investigation and Suspension Docket No. 3843, Coal from Indiana to Illinois, as the same is now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the seal of said Commission this 14th day of February, A. D. 1934.

[SEAL] GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

105 Before Interstate Commerce Commission

Application for suspension of supplement no. 76 to Chicago, Milwaukee, St. Paul and Pacific Railroad GFD no. 15200–B, I. C. C. no. B–5133, filed to become effective December 23, 1932

December 13, 1932

Comes now the Illinois Coal Traffic Bureau, a voluntary association of coal producers having mines in the State of Illinois with a

production in excess of fifteen million tons annually, and presents this, its protest and application for a suspension of rates contained in the above-named tariff, and as grounds for its protest and request for suspension, respectfully submits:

That the above-named tariff provides for reduced rates on bituminous coal, carloads, from mines on the Chicago, Milwaukee, St. Paul and Pacific Railroad in what are generally known as the "Brazil-Clinton and Linton-Sullivan groups" in Indiana to certain destinations on the Chicago, Milwaukee, St. Paul and Pacific Railroad in northern Illinois, including such points as Rockford and Freeport, said reductions being as follows:

To—	From Brazil-Clinton District			From Linton-Sullivan District		
	Present	Proposed	Decrease	Present	Proposed	Decrease
Rockford Freeport	187	170	17	192	175	17

That the rates and distances from southern Illinois contrasted with the distances and protested rates from Indiana to these two points are as follows:

To—	So. Illinois		C., M., St. P. & P. Brazil-Clinton		Under So. Ill.		C., M., St. P. & P. Linton-Sullivan		Under So. Ill.	
	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate
Rockford	328.2	200	235.0	170	93.2	30	274.4	175	53.8	25
Freeport	342.4	200	277.4	170	65.0	30	316.8	175	25.4	25

From the above statement it will be noted that the proposed note from the Linton-Sullivan district to Rockford exceeds the Brazil-Clinton rate to the same point by 5¢ a ton for the additional
106 haul of 39.4 miles, but the southern Illinois rate will exceed the Linton-Sullivan rate by 25¢ a ton for an additional haul of 53.8 miles. If the five-cent differential is proper as between Clinton-Brazil on the one hand and Linton-Sullivan on the other, the southern Illinois rate should exceed the Linton-Sullivan rate by only 7¢ a ton rather than 25¢ a ton as proposed, or conversely, the Linton-Sullivan rate should be 7¢ a ton under southern Illinois.

To Freeport, the differential—Linton-Sullivan over Brazil-Clinton—is 5¢ a ton for an additional haul of 39.4 miles, but Southern Illinois will be 25¢ a ton over Linton-Sullivan for an additional haul of only 25.4 miles. If 5¢ a ton is a proper differential—Linton-Sullivan over Brazil-Clinton—then southern Illinois should only be 3¢ higher than Linton, or conversely, Linton should be but 3¢ lower than southern Illinois rather than 25¢ lower.

While the proposed reduction of 17¢ a ton has only been published from mines on the Chicago, Milwaukee, St. Paul and Pacific Railroad in the Brazil-Clinton and Linton-Sullivan districts, it is obvious that if the rates are permitted to become effective, similar reductions will be made for competitive reasons from mines on other roads in the Brazil-Clinton and Linton-Sullivan districts involving substantially longer hauls and reductions will undoubtedly be proposed from mines in the Princeton and Boonville groups, which lie immediately to the south of the Linton-Sullivan district, and which today take rates differentially over the Linton-Sullivan rates. This in turn will bring about still further preference to the producers of coal in the State of Indiana, and will be most prejudicial to the producers of coal in Illinois, members of your petitioner's association.

The rates on coal from Illinois mines to Rockford and Freeport were before the Interstate Commerce Commission in the Illinois Thirteenth Section case, Intrastate Rates on Bituminous Coal Between Points in Illinois, 182, ICC 537. Beginning at the bot-
107 tom of page 549 of the report, reference is made to the low level of rates prevailing from Indiana mines to Rockford and Freeport and primarily because of this low level of rates from Indiana, the Commission refused to require any increases in the rates from Illinois mines. The finding of the Commission, taken from page 550 of the report, reads as follows:

"The Illinois producers urge with much force that their rates to Rockford, Freeport, and Dixon should not be increased so long as such low rates from the Indiana groups to the same destinations are permitted to continue. The principal competition of the Illinois producers at these destinations comes from Indiana, and we find no sufficient justification for requiring any of the Illinois rates to these points to be increased until the low rates from Indiana referred to have been placed upon a level more nearly commensurate with the general level of rates in this territory."

In spite of this finding of the Commission, the Chicago, Milwaukee, St. Paul and Pacific Railroad now publish this reduction of 17¢ a ton from their Indiana mines, which is bound to be followed by other reductions from other Indiana mines. If these reductions are permitted to take effect, it will work an extreme hardship on the Illinois producers of coal, members of your petitioner's association, and will make it exceedingly difficult for them to sell coal in the Rockford and Freeport market.

Wherefore, your petitioner enters this, its protest, to the aforesaid reductions in rates on coal from Indiana mines to points on the Chicago, Milwaukee, St. Paul and Pacific Railroad in Illinois, including the rates to Rockford and Freeport, Illinois, and respectfully requests the Commission to suspend the operation of Supplement No. 76 to Chicago, Milwaukee, St. Paul and Pacific Railroad

ICC No. B–5133, pending an investigation as to the propriety thereof.

A copy of this protest and application for suspension is being mailed today to Mr. M. F. Edbrooke, Assistant General Freight Agent for the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the issuing agent.

Respectfully submitted.

ILLINOIS COAL TRAFFIC BUREAU,
W. Y. Wildman,
By W. Y. WILDMAN, *Traffic Manager.*

307 NORTH MICHIGAN AVENUE,
Chicago, Illinois.

DECEMBER 12, 1932.

108 Before Interstate Commerce Commission

Protest

December 14, 1932

ST. LOUIS, MISSOURI, *December 12, 1932.*

Mr. GEORGE B. MCGINTY,
Sec'y, Interstate Commerce Commission,
Washington, D. C.

DEAR SIR: Confirming telegram today.

This is to respectfully request the suspension of supplement 76 to Chicago, Milwaukee, St. Paul and Pacific, G. F. D. 15200–B, I. C. C. B–5133 (hereinafter called the "protested schedule"), published to become effective December 23, 1932, insofar as it reduces rates on coal from Clinton and Linton districts to various points in Illinois on the Chicago, Milwaukee, St. Paul and Pacific Railway.

Your petitioner, the Consolidated Coal Company of St. Louis, is engaged in the mining and selling of coal, with mines in what are known as the southern Illinois group and Springfield group in the State of Illinois; and in marketing its product comes in keen competition with coal mines in what are known as the Brazil-Clinton and Linton-Sullivan groups in the State of Indiana. The protested schedule has the effect of reducing rates on coal from the latter two groups to various destinations in the State of Illinois without a corresponding reduction being made by the carriers serving our mines.

In Interstate rates on bituminous coal between points in Illinois, 182 I. C. C. 537 (hereinafter called "Docket 23130"), rates on coal from all Illinois groups, as well as from the above-mentioned Indiana groups to Rockford, Freeport, etc., were considered, and a very exhaustive record made. We believe no better justification for a suspension of the protected schedule could be brought to your atten-

tion than the facts as stated by your Commission in that report at page 549, as follows:

"While it is evident that a number of the assailed rates from Illinois groups to Rockford, Freeport, and Dixon are well below the reasonable level of rates in this territory, that appears to be true also of most of the rates from the Indiana groups to the same destinations. For example, the rate from the Brazil-Clinton group to Dixon is only 66.5 per cent of the Holmes & Hallowell scale, which is the same percentage of that scale as is reflected by the assailed rate from southern Illinois to Dixon; and the rate from Brazil-Clinton to Freeport is only 67 per cent of the scale, as compared with 64 per cent from southern Illinois to Freeport and 66 per cent from southern Illinois to Rockford. Rates from the more distant Indiana groups to these three destinations range as low as 56 per cent of the scale. The Illinois producers urge with much force that their rates to Rockford, Freeport, and Dixon should not be increased so long as such low rates from the Indiana groups to the same destinations are permitted to continue. The principal competition of the Illinois producers at these destinations comes from Indiana, and we find no sufficient justification for requiring any of the Illinois rates to these points to be increased until the low rates from Indiana referred to have been placed upon a level more nearly commensurate with the general level of rates in this territory."

109 And in the findings, at page 564, as follows:

"4. The assailed rates to Rockford, Freeport, and Dixon should not be found to be unlawful under section 13 of the act until and unless the interstate rates from Indiana groups to the same destinations are increased to a level more nearly commensurate with the general level of the rates on coal in this territory."

In appendix B of the report in Docket 23130 is shown distances of 197 to 237 miles from the Springfield group to Rockford at rate of 170 cents; from the Brazil-Clinton group to the same point, distances from 244 to 271 miles are shown at rate of 187 cents—the protested schedule makes this rate 170 cents, the same as now prevailing from the Springfield group. However, we have averaged the tariff route distances from all mines in the Springfield group and found it to be 237.9 miles to Rockford and from the Brazil-Clinton group to be 270.9 miles. We have done the same to Freeport, which disclosed that from the Springfield group the average distance is 264.8 miles and from the Brazil-Clinton group 304 miles. Distance considered, there could be no justification for the same rate from the Brazil-Clinton group to either Rockford or Freeport as now in effect from the Springfield group—although that is what the protested schedule will do if permitted to become effective.

If the protested schedule is allowed to become effective, the only conclusion that can be reached is that such rates will be lower by 17 cents per ton than the existing level of rates, which is not now

commensurate with the general level. It is our request, therefore, that same be suspended, as conditions have not changed since the decision in Docket 23130.

Respectfully submitted.

THE CONSOLIDATED COAL COMPANY OF ST. LOUIS.
W. E. Rosenbaum,
WM. E. ROSENBAUM,
933 Cotton Belt Building,
St. Louis, Missouri,
For Protestant.

Dated at St. Louis, Missouri, December 12, 1932.

Cc—Mr. J. T. AVERITT,
Coal Traffic Manager,
C., M., St. P. & P. Ry.,
Chicago, Illinois.

110 [Caption omitted.]

111 Before the Interstate Commerce Commission

Application of the Springfield, Illinois, Coal Traffic Bureau for suspension of rates published on bituminous coal, carloads, from the Clinton and Linton, Indiana, groups to Rockford and Freeport, Illinois, indices nos. 377 and 383, respectively, supplement no. 76, to Chicago, Milwaukee, St. Paul and Pacific Railway Company, I. C. C. No. B-5133, filed to become effective December 23, 1932

(Dec. 15, 1932)

The Springfield Illinois Coal Traffic Bureau respectfully represents that it is a voluntary organization of coal mining companies operating twenty-one mines in and adjacent to Springfield, Illinois, as follows:

Peabody Coal Company	5 mines at Springfield.
Peabody Coal Company	1 mine at Kincaid.
Peabody Coal Company	1 mine at Humphrey.
Peabody Coal Company	1 mine at Callaway.
Peabody Coal Company	1 mine at Taylorville.
Peabody Coal Company	1 mine at Riverton.
Peabody Coal Company	1 mine at Auburn.
Brewerton Coal Corporation	1 mine at Lincoln.
Brewerton Coal Corporation	1 mine at Springfield.
Central Ill. Coal Mining Co	1 mine at Springfield.
Mine B Coal Company	1 mine at Springfield.
Panther Creek Mines, Inc	4 mines at Springfield.
Panther Creek Mines, Inc	1 mine at Panther Creek.
Sangamon Coal Company	1 mine at Springfield.
Total	21 mines.

That Rockford and Freeport, Illinois, and other points similarly situated in Northern Illinois, is the natural market for coal produced at the mines of these protestants, and that they are
112 vitally interested in the level and measure of the rates from their said mines as compared with the rates from mines in

Indiana and other points in Illinois. Your protestants respectfully represents that the present level and relationship of rates as they now exist between your protestant's mines on the one hand and mines in Indiana on the other hand, will not permit the free movement of coal from your protestant's mines in competition with coal mined in Indiana and that the present rates from the mines of your protestants are unjust, unreasonable, and excessive, while the proposed rates from the Indiana mines complained of herein are unjustly discriminatory and unduly preferential to mines in Indiana.

Attention is directed to the fact that there is now pending before the Illinois Commerce Commission the case of Springfield Illinois Coal Traffic Bureau vs. A. & E. R. R., et al., Illinois Commerce Commission Docket No. 21510, which proceeding seeks the establishment of just, reasonable, and lawful rates from the mines of these protestants to Rockford and Freeport, Illinois, and other points in northern Illinois, in order that their said coal can freely compete with coal produced at Indiana mines. To permit the going into effect of said proposed rates from Indiana mines will further increase and accentuate the unlawful relationship that now exists between the mines of your protestants on the one hand and the Indiana mines on the other hand. These protestants direct attention to the fact that the relationship and level of rates between points in Illinois and Indiana were before the Interstate Commerce Commission in docket no. 23130 and that by said decision the said Commission recognized the unreasonableness, unlawfulness, and improper relationship in the rates from Indiana mines as compared with the rates from Illinois mines to the destination territory involved.

113 In order to demonstrate the unlawfulness of the rates proposed, we direct attention to the level of said proposed rates as compared with the level of rates from the mines of your protestants:

	Mileage[1]	Present rate		Proposed rate	
		Rate	Percent of H. & H. scale	Rate	Percent of H. & H. scale
To Rockford, Ill., from—					
Springfield group	198.1	170	77.6		
Brazil-Clinton group	235.0	187	75.4	170	68.5
Linton-Sullivan group	274.4	192	70.3	175	64.1
To Freeport, Ill., from—					
Springfield group	207.3	170	75.2		
Brazil-Clinton group	277.4	187	68.5	170	62.3
Linton-Sullivan group	316.8	192	64.4	175	58.7

[1] Average mileage via the shortest tariff route.

Routes:

From Springfield group to Rockford via I. C. R. R. Mendota C., M., St. P. & P.

From Springfield group to Freeport via I. C. R. R. direct.

From Indiana mines to both points via C. M., St. P. & P. Ry. direct.

Using the Holmes & Hallowell scale as a convenient yardstick for the measurement of the level of Illinois rates with the proposed rates from mines in Indiana, we call attention to the fact that the proposed rate from the Linton-Sullivan group in Indiana to Freeport, Ill., is 58.7 percent of the Holmes & Hallowell scale, while the rate from the Springfield group to Freeport is 75.2 percent of the Holmes & Hallowell scale.

114 In the event said tariffs are suspended, and hearing granted, at said hearing, these protestants will be prepared to show that there is a demand for coal mined at Springfield, and that under the present rate adjustment there is very little, if any, movement of coal from the mines of your protestants to Rockford and Freeport; that said coal, under the present rate adjustment, cannot be sold in competition with coal produced in other competing fields in Indiana and Illinois, and demonstrates conclusively the necessity for a revision of the present freight rate adjustment on the movement of coal from Indiana and Illinois to said destinations.

We, therefore, request the suspension of the said proposed rates and that, after hearing, just, reasonable, and nondiscriminating rates be established from said Indiana mines which will bear a proper relationship to the rates from the mines of your protestants to said destinations, which will permit the free movement of coal from their mines.

Respectfully submitted.

SPRINGFIELD, ILLINOIS, COAL TRAFFIC BUREAU,
C. B. CARDY,
Attorney, 332 South Michigan Avenue.
L. F. MALUM,
Traffic Manager, 343 South Dearborn Street, Chicago, Ill.

CHICAGO, ILL., *December 13, 1932.*

115 Before the Interstate Commerce Commission, Division 2

Investigation and Suspension Docket No. 3843

Coal from Indiana to Illinois

Order instituting investigation

December 22, 1932

It appearing that there have been filed with the Interstate Commerce Commission by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company tariffs containing schedules stating new individual and joint rates and charges, and new individual and joint regulations and practices affecting such rates and charges, to become effective on the 23rd day of December 1932, designated as follows:

Chicago, Milwaukee, St. Paul and Pacific Railroad Company
Supplements Nos. 76 and 77 to I. C. C. No. B–5133

It is ordered that the Commission, upon complaint, without formal pleading, enter upon a hearing concerning the lawfulness of rates, charges, regulations, and practices stated in the said schedules contained in said tariffs, viz: On pages 3 thereof, all provisions shown in connection with index nos. 263 to 385, inclusive, and 4280 to 4286, inclusive;

It further appearing that said schedules make certain reductions in rates for the interstate transportation of bituminous coal, carloads, and the rights and interests of the public appearing to be injuriously affected thereby, and it being the opinion of the Commission that the effective date of the said schedules contained in said tariffs should be postponed pending said hearing and decision thereon;

It is further ordered that the operation of the said schedules contained in said tariffs be suspended, and that the use of the rates, charges, regulations, and practices therein stated be deferred upon interstate traffic until the 23rd day of July 1933 unless otherwise ordered by the Commission, and no change shall be made in such rates, charges, regulations, and practices during the said period of suspension unless authorized by special permission of the Commission;

It is further ordered that the rates and charges and the regulations and practices thereby sought to be altered shall not be changed by any subsequent tariff or schedule, until this investigation and suspension proceeding has been disposed of or until the period of suspension and any extension thereof has expired, unless authorized by special permission of the Commission;

And it is further ordered that a copy of this order be filed with said schedules in the office of the Interstate Commerce Commission, and that copies hereof be forthwith served upon the carriers parties to said schedules and that said carriers parties to said schedules be, and they are hereby, made respondents to this proceeding, and that they be duly notified of the time and place of the hearing above ordered.

By the Commission, Division 2:

[SEAL] GEORGE B. MCGINTY,
Secretary.

116 In United States District Court

[File endorsement omitted.]

Narrative statement of evidence before I. C. C.

Filed August 6, 1934

I. & S. Docket 3843, Chicago, Ill., February 20, 21, 1933

Before Examiner Trezise of Interstate Commerce Commission; G. H. Shafer, Illinois Commerce Commission

Appearances

J. T. Averitt, C. L. Taylor, for Chicago, Milwaukee, St. Paul & Pacific Railway Company.

Jonas Waffle, E. B. Wilkinson, and M. F. Gallagher, for Coal Trade Association of Indiana.

J. A. Behrle, for Alton Railroad.

Guy A. Gladson, for all railroad protestants.

W. Y. Wildman, for Illinois Coal Traffic Bureau.

C. B. Cardy, L. F. Malum, for Springfield, Illinois, Coal Traffic Bureau.

W. E. Rosenbaum, for Consolidated Coal Company, of St. Louis, protestant.

R. P. DeCamp, J. T. Quisenberry, for Illinois Central Railroad Company and railroad protestants, generally.

J. E. Flansburg, for Chicago & North Western Railway Company.

Leo. P. Day, for New York Central Lines.

C. S. Bather, for Rockford Manufacturers & Shippers Association and Freeport Chamber of Commerce.

John A. Connors, for Chicago & Eastern Illinois Railway Company.

R. B. Battey, for Chicago, Burlington & Quincy Railroad Company.

Statement by Examiner Trezise

The Interstate Commerce Commission has set for hearing at this time and place I. & S. Docket 3843. By schedules filed to become effective December 23, 1932, respondent proposed to reduce the rates on bituminous coal from the Brazil-Clinton and Linton-Sullivan groups in Indiana, to Rockford, Freeport, and certain other distinations in northern Illinois. Upon protest of various parties,
117 including various railroads, these schedules were suspended until July 23, 1933 (tes. 4–5).

J. T. AVERITT, Chicago, coal traffic manager, Chicago, Milwaukee, St. Paul & Pacific Railroad Company, testified:

I have held my present position 25 years; I have charge not only of rates and divisions on coal but the solicitation also; I have all to do with coal on the Milwaukee Railroad. I have had experience with the construction and publication of rates during all that time. I am familiar with the issues in this proceeding.

I have been connected with railroads serving Indiana, and intimately acquainted with the Indiana-Illinois coal-rate adjustment, for over 25 years. Let me say at the outset I shall not contend that the rates which are in effect from the two districts in Indiana served by our company are more than reasonable rates. As a matter of fact, they are less than reasonable maximum rates as are all the rates from Illinois, Indiana, and western Kentucky measured by any test evolved by the Commission in recent years. I do contend, however, for an equality of opportunity in these markets for the mines served by the Chicago, Milwaukee, St. Paul & Pacific Railroad which, all conditions considered, they are entitled to have.

Accordingly, rates were reduced from mines served by respondent from its Clinton and Linton, Indiana, groups in the same amount as they were required to be reduced from Illinois under orders of the Illinois Commerce Commission. The rates, to accomplish this, were suspended on application of the Consolidated Coal Company of St. Louis; Illinois Coal Traffic Bureau; Springfield, Illinois, Coal Traffic Bureau, and a number of Illinois carriers, including the Alton Railroad, Chicago, Burlington and Quincy Railroad, Chicago &
118 Illinois Midland Railway, Illinois Central Railroad, Missouri Pacific Railway, and Wabash Railway. Rates were to become effective December 23, 1932, and attention is called to the fact that the protest and application for suspension of these rates filed by the carriers enumerated above was dated at Chicago, December 14th, 9 days before effective date, while the rules of practice require application to be on file 10 days before effective date.

Therefore, these carrier protestants under the Commission's rules have no standing. It was in fact an organized 11th hour attempt to prevent, through suspension proceedings, this respondent from making rates that would allow producers served by it in Indiana to participate in the markets available to them on respondent's line against producers of coal in Illinois on rates initiated by the Illinois Commerce Commission.

An order reducing rates from all Illinois groups in the amount of 17 cents per ton was issued by the Illinois Commerce Commission in dockets nos. 13569 and 13568, effective on intrastate traffic August 20, 1930.

We are not selfish about this proposition. We have recognized the long-standing relationship between origin groups in Illinois and Indiana to destinations in the Northwest, to the extent even of increasing rates from Indiana groups when such increases were not

required under order of the Illinois Commerce Commission. I refer particularly to the Lake Dock Coal cases, 89 I. C. C. 170, wherein the Commission ordered increases in rates from southern Illinois group to destinations in Wisconsin and Minnesota and we advanced rates to that territory in the exact amount that the rates were required to be advanced from Illinois in order to maintain group origin relationship, although no finding or order of the Commission required such action on the part of this respondent or any of the Indiana lines.

119 This respondent, with other interested lines whose rates operated via interstate routes, withheld making reductions in interstate rates at the time intrastate rates were reduced by the Illinois Commerce Commission pending determination by the Interstate Commerce Commission of question of discrimination created thereby as alleged in 13th section petition filed by the Illinois, Indiana, and western Kentucky carriers in docket no. 23130, 182 I. C. C. 537.

In final conclusion of that case, the Commission found that the assailed rates to Rockford, Freeport, and Dixon, Illinois, should not be found to be unreasonable under section 13 of the act until and unless rates from Indiana groups to the same destinations were increased to a level more nearly commensurate with the general level of rates on coal in this territory.

While the Commission did not specify what Indiana groups in their opinion should be increased to "a level more nearly commensurate with the general level of rates on coal in this territory", they had no facts before them with reference to the rates from Clinton and Linton, Indiana, groups to Rockford and Freeport, Illinois, on which to base that opinion because it is not a fact and will be so shown.

Considerable evidence was presented on behalf of the Illinois Coal Traffic Bureau, Witness Wildman, to the effect that rates from Illinois reduced by the Illinois Commerce Commission were not a burden on interstate traffic from Indiana and testimony offered as to the rates and distances to Rockford and Freeport, Illinois, from Boonville and Princeton, Indiana, districts served by the Chicago & Eastern Illinois Railway, Southern Railway, and Cleveland, Cincinnati, Chicago & St. Louis Railway, but there was no evidence introduced to show that rates from Clinton and Linton, Indiana, groups served by respondent were unduly low as compared with any Illinois rates.

120 Following the Commission's decision in docket no. 23130, and in response to finding 4 thereof, the carriers concerned in the rates to Rockford and Freeport, Illinois, met with the purpose of reviewing the situation and harmonizing rates to Rockford and Freeport, Illinois, in line with what appeared to be an invitation from the Commission to advance certain rates in Indiana as a condition upon which rates from Illinois might be restored, although what rates from Indiana the Commission had in mind was not revealed.

However, all efforts to accomplish results were vetoed by one of the principal southern Illinois lines serving Rockford and Freeport, Illinois, which also joins in the alleged low rates from the Princeton and Boonville, Indiana, groups. The rate via two other Rockford-Freeport lines joining in rates from the principal producing mines located on the A. W. & W. Railway in the Princeton, Indiana, group was $2.19 per ton, compared with $1.99 per ton via line opposing adjustment, while the other Rockford-Freeport line does not join in any rates from these mines.

I have prepared a number of exhibits dealing with this situation which I will now submit.

Dealing particularly with the protest of the Consolidated Coal Company, whose mines are located in the Springfield district at or in the vicinity of Mt. Olive, Illinois, and served by the Wabash Railway, I have shown in exhibit no. 1, the tariff routes and mileages from Mt. Olive, Illinois, via the Wabash Railway to Rockford, Illinois. The present rate from Mt. Olive is $1.70 per ton and applies in connection with the Wabash Railway via routes ranging from 280 miles via Decatur, Illinois, and Illinois Central Railroad to 341 miles via Newell, Illinois, and Chicago, Milwaukee, St. Paul & Pacific Railroad. The average mileage via all of the tariff routes is 315 miles for which distance rate of $1.70 per ton represents 58 121 percent of the Holmes & Hallowell scale. The scale recently prescribed by the Commission in docket no. 23922, if applied to this average distance, would result in a rate of $2.23 per ton.

Contrasted to this, from mines on the Chicago, Milwaukee, St. Paul & Pacific Railroad in the Clinton, Indiana, group, the distance over the longer route is 245 miles. We have two routes there, one via Delmar and Kirkland and the other through Bensenville, Illinois, the longer route being 245 miles. The suspended rate of $1.70 per ton for this distance is 67 percent of the Holmes & Hallowell scale, while the present rate of $1.87 per ton is 74 percent of that scale.

On the 23922 scale, rate would be $1.99 per ton, or 24 cents per ton less than for the average mileage from Mt. Olive, Illinois.

From the Linton, Indiana, group mines served by the Chicago, Milwaukee, St. Paul & Pacific Railroad via the longer route, the distance is 289 miles. Suspended rate of $1.75 per ton is equivalent to 63 percent of the Holmes & Hallowell scale, while the present rate of $1.92 per ton is 69 percent of that scale. On the 23922 scale the rate for distance of 289 miles would be $2.15 per ton, or 8 cents per ton less than the average of the routes from Mt. Olive, Illinois, via Wabash Railway.

Notwithstanding this, there seems to be no objection on the part of the short lines from the Springfield district to the Wabash Railway, making the same rate of $1.70 per ton that applies from the nearest mine in the Springfield group, and even though they did, it would not avail them anything because by order of the Illinois

Commerce Commission these rates were reduced from $1.87 per ton to $1.70 per ton, or 17 cents per ton, which is the exact amount that I propose to reduce the rate from the Clinton group in Indiana.

Exhibit no. 2, consisting of three pages, deals with the history of rates to Rockford and Freeport, Illinois. Attention is
122 called to the fact that from as early as January 1, 1910, to August 20, 1930, on which date intrastate rates from Illinois mining groups were reduced by order of the Illinois Commerce Commission, the rates from the Clinton, Indiana, group were either lower or exactly the same as Springfield, Illinois, and Linton, Indiana, group was 5 cents or less per ton in excess of the Springfield, Illinois, group rate, except the period following Ex parte 74 percentage advances when all differentials were disturbed. Up to June 10, 1911, the differential between Linton and Clinton, Indiana, was 10 cents per ton. Effective June 10, 1911, rates from Clinton, Indiana, were put on a parity with the rates from Springfield, Illinois, group; that is, they were advanced in accordance with the understanding among the interested lines that the Springfield rate would be the minimum rate from Clinton, Indiana, to Joliet, Aurora, and Rockford, Illinois.

Page 2 of this exhibit deals with the situation at Freeport, Illinois, and the rate parity, Clinton versus Springfield, is not of as long duration but was effected by joint consideration of all lines at interest, and it is in these relationships that the suspended rates were intended to restore.

In the evolution of rates on coal in this territory, consideration has been given to the factor of distance, but it was not the only factor; but in these later days while no one professes to want a distance tariff, it is the usual procedure, either in defense or in prosecuting complaints, that the first and only consideration is that of distance. The Commission said on page 542, 182 I. C. C. 537:

"It is conceded by all that to determine distances over shortest possible route over which carload traffic might be interchanged, is an almost insuperable task because of the many origins shown in the carriers' tariff and multiplicity of routes."

123 Exhibit no. 3, consisting of three pages, shows the distances involved in the transportation of bituminous coal from the Brazil-Clinton and Linton-Sullivan groups versus Springfield, Illinois, and southern Illinois groups, to Rockford and Freeport, Illinois, and the average to both destinations, first, via the short route and, second, average distance from all mines in the group. These distances were taken from exhibit no. 370 submitted by Witness Waffle and exhibit no. 335 submitted by Witness Wildman in docket no. 23130. It will be observed that the distances computed by both witnesses are different and illustrates the difficulty encountered in finding exact mileage as expressed by the Commission quoted above.

Using the figures in this exhibit, there is shown on page 3 a composite statement of distances to Rockford and Freeport, Illinois,

from Clinton, Indiana; Springfield, Illinois; Linton, Indiana; and southern Illinois groups. Exhibit no. 4 is a comparison of distances from Chicago, Milwaukee, St. Paul & Pacific Railroad mines, from which rates under investigation are published, in the Clinton and Linton, Indiana, groups to Rockford and Freeport, Illinois, via short single line route of respondent compared with distances over routes in which the Chicago, Milwaukee, St. Paul & Pacific Railroad is required to join under orders of the Illinois Commerce Commission from Springfield, Illinois, and southern Illinois groups.

From the Clinton, Indiana, group, the present rate is $1.87 per ton; proposed, $1.70 per ton. The distance of the Chicago, Milwaukee, St. Paul & Pacific Railroad over its single line from these mines to Rockford, Illinois, is 231 miles. The present rate from the Linton, Indiana, group is $1.92 per ton; proposed $1.75 per ton, distance 275 miles. The exhibit shows that the respondent joins its connections via routes indicated thereon in rates from central Illinois
124 (otherwise known as Springfield, Illinois) of $1.70 per ton, average distances ranging from 199 miles in the case of the Illinois Central Railroad via Mendota, Illinois, to 373 miles in connection with route of Cleveland, Cincinnati, Chicago & St. Louis Railway, via Danville, Illinois, New York Central Railroad, Chicago and Chicago, Milwaukee, St. Paul & Pacific Railroad with average distance of 269 miles; and from mines in southern Illinois via routes indicated ranging from 327 miles via Illinois Central Railroad, Mendota, Illinois; and Chicago, Milwaukee, St. Paul & Pacific Railroad, to 411 miles via Missouri Pacific Railroad, Benton, Illinois; Chicago & Eastern Illinois Railway, Chicago, Illinois; and Chicago, Milwaukee, St. Paul & Pacific Railroad, with average from all origins of 369 miles. Those are to Rockford. (Test. 5–17.)

To Freeport, Illinois, the route of the Chicago, Milwaukee, St. Paul & Pacific Railroad from Clinton, Indiana, is 271 miles, and from Linton, Indiana, 315 miles, compared with joint rates operated in connection with the Chicago, Milwaukee, St. Paul & Pacific Railroad from central Illinois (Springfield, Illinois) ranging from 242 miles from Illinois Central Railroad mines via Mendota, Illinois, and Chicago, Milwaukee, St. Paul & Pacific Railroad, to 413 miles from mines on the Cleveland, Cincinnati, Chicago & St. Louis Railway, via Danville, Illinois, New York Central Railroad, Chicago, Illinois, and Chicago, Milwaukee, St. Paul & Pacific Railroad, average distance from all mines of 309 miles.

From southern Illinois, the distances range from 370 miles from mines on the Illinois Central Railroad via Mendota, Illinois, and Chicago, Milwaukee, St. Paul & Pacific Railroad, to 511 miles from Missouri Pacific Railroad mines via East St. Louis, Illinois; Alton Railroad, Joliet, Illinois; Elgin, Joliet & Eastern Railway, Spaulding, Illinois; and Chicago, Milwaukee, St. Paul & Pacific Railroad.

125 At the bottom of the page is shown a composite of distances from the four groups to Rockford and Freeport, Illinois.

"Q. (By Mr. ROSENBAUM:) Mr. Averitt, before leaving your exhibit no. 4, in connection with the Freeport comparison, have you not made an error there in showing the mileage to Freeport in connection with the Illinois Central as being via Mendota, and the Chicago, Milwaukee, St. Paul & Pacific Railroad?

"A. No, that is right; that applies via the Illinois Central direct.

"Q. Direct?

"A. Yes, sir.

"Q. In other words, the Chicago, Milwaukee, St. Paul & Pacific—that routing then should be changed to read, Illinois Central direct, instead of 'Mendota, Chicago, Milwaukee, St. Paul & Pacific'——

"A. Just a moment. What from?

"Q. From Illinois Central mines in Central Illinois, to Freeport.

"Mr. QUISENBERRY. The mileage is 242 miles.

"The WITNESS. 370 miles.

"Mr. ROSENBAUM. No; you have got 242 miles shown to Freeport via the Illinois Central, Mendota, and Chicago, Milwaukee, St. Paul & Pacific. That might be all right to Rockford, but I am just wondering if you did not make an error there, to Freeport.

"The WITNESS. From central Illinois via the Illinois Central, via Mendota, and the Chicago, Milwaukee, St. Paul & Pacific, is 242 miles. That is a rate in which we are required to join.

"Mr. ROSENBAUM. You do not represent——

"The WITNESS. It is the short line——

"Mr. ROSENBAUM. That, then, as being the mileage direct via the Illinois Central.

"The WITNESS. No.

126 "Mr. ROSENBAUM. Which is the short mileage?

"The WITNESS. The Illinois Central is longer.

"Mr. ROSENBAUM. To Freeport?

"The WITNESS. Oh, no.

"Mr. ROSENBAUM. We are talking about Freeport.

"The WITNESS. Well, this rate—or this distance of 242 miles, is the distance in which the Milwaukee Railroad is required to join the Illinois Central, by order of the Illinois Commerce Commission."

Exhibit 5 is a map showing locations of the Illinois, Indiana, and western Kentucky coal mining groups. There is also shown line of the Chicago, Milwaukee, St. Paul & Pacific Railroad from the Clinton and Linton, Indiana, groups designated as J and K, respectively, to Rockford and Freeport, Illinois. The portion of the lines of the northern section of the State shown in red indicate the territory to which rate of $1.70 per ton from the Clinton, Indiana, group and $1.75 per ton from the Linton, Indiana, group, were published to become effective December 23, 1932, which rates are now under suspension in this proceeding. The rates to Rockford and Freeport,

Illinois, were held as maximum at intermediate points back to Bensenville, Illinois, the first station west of Franklin Park in the Chicago switching district and to Duffin, Illinois, the first station north of Aurora, Illinois.

The Springfield, Illinois, mining group (central Illinois) is designated as group D, extending from Bloomington, Illinois, on the north to Edwardsville and Glen Carbon, Illinois, near East St. Louis, Illinois, on the south. We understand, however, there is no mine at Bloomington, Illinois, and the most northern mine in the Springfield, Illinois, group now in operation is at Lincoln, Illinois, which is of small capacity, but it has its effect in diluting the mileage from
127 the Springfield group. The bulk of the coal produced in the Springfield district is at or south of Springfield, Illinois, a large part of which is south of Springfield. Southern Illinois group, designated as group H, is the largest producing group in the State of Illinois, located in Franklin, Williamson, and Saline, Counties, Illinois.

There is one line in Indiana, namely, the Chicago, Milwaukee, St. Paul & Pacific Railroad, serving mines in that State and that reaches direct over its own rails both Rockford and Freeport, Illinois. There are two lines serving Springfield and southern Illinois that serve Rockford and Freeport via their own rails.

Exhibit no. 6 shows the miles and present and proposed rates from Clinton, Indiana, and Linton, Indiana, groups on respondent's line, and the percentage each bears to the Holmes & Hallowell scale, also what rates would be under scale prescribed by the Commission in rates from Indiana to Illinois, I. C. C. docket 23922, with like information from the Springfield, Illinois, group via Chicago, Burlington & Quincy Railroad and Illinois Central Railroad, and from southern Illinois group via Chicago, Burlington & Quincy Railroad and Illinois Central Railroad and also western Kentucky via Illinois Central Railroad, western Kentucky rates being related by order of the Interstate Commerce Commission to the rates from southern Illinois.

It will be observed that the proposed rate from Clinton, Indiana, via respondent is 69 percent of the Holmes & Hallowell scale, and under scale prescribed in docket no. 23922, would be $1.99 per ton. That the proposed rate from Linton, Indiana, would be 65 percent of the Holmes & Hallowell scale, and under docket 33922 scale, $2.07 per ton. From the Springfield, Illinois, group via Chicago, Burlington & Quincy Railroad, rate of $1.70 per ton, or 61 percent of the Holmes & Hallowell scale, and under 23922 scale, $2.15 per ton.
128 The $1.70 per ton rate from Springfield via Illinois Central Railroad would be 69 percent of Holmes & Hallowell scale, and under 23922 scale would be $1.99 per ton, or the same, as would be the rate from Chicago, Milwaukee, St. Paul & Pacific Railroad, Glinton, Indiana, group mines.

From southern Illinois, rate of Chicago, Burlington & Quincy Railroad is $2 per ton, 56 percent of Holmes & Hallowell scale, and under 23922 scale, $2.55 per ton. From southern Illinois via Illinois Central Railroad $2 per ton rate is 61 percent of Holmes & Hallowell scale, and under 23922 scale would be $2.39 per ton.

From western Kentucky via Illinois Central Railroad, rate of $2.35 per ton is 58 percent of the Holmes & Hallowell scale, and under 23922 scale would be $2.87 per ton.

All of which we feel, abundantly proves that the proposed rates from Clinton and Linton, Indiana, groups are fully up to the level and commensurate with general level of rates to Rockford and Freeport, Illinois. We strenuously object to the principle of basing rates from our mines to the territory served by us direct and in competition with mines in Illinois on the use of average of all routes from groups in Indiana which we serve while at the same time the rates from Illinois are based on absolute shortest mileage that can be found. This was done in docket no. 23130.

If this principle is extended, it will deprive respondent of an opportunity to haul coal from mines on its own rails in Indiana to destinations on its own rails in northern Illinois, Wisconsin, Iowa, Minnesota, and South Dakota.

Finally, how can proposed rates from Clinton and Linton, Indiana, groups be condemned when this respondent is required by another regulating authority to join in rates from these Illinois groups
129 on mileages ranging from 199 to 373 miles from the Springfield group, and 327 to 411 miles from southern Illinois group to Rockford, Illinois, and distances ranging from 242 miles from Springfield, Illinois, group and 370 to 511 miles from southern Illinois group to Freeport, Illinois? If mileage is the only factor, why should rates from Springfield, Illinois, via routes of 373 miles be any lower than rate from southern Illinois for 327 miles to Rockford, or why should rate from Springfield, Illinois, for 413 miles to Freeport, Illinois, be lower than the rate from southern Illinois for 370 miles? In other words, it seems to me to be consistent, if we were to have a mileage scale, it should be a mileage scale without any reservation.

"Mr. TAYLOR. The respondent at this time offers in evidence exhibits 1 to 6, both inclusive.

"Exam. TREZISE. It will be understood throughout this hearing that exhibits, when referred to and properly identified, will be shown as received in evidence without formal offer, unless there is objection, and they are later rejected. Let the record show that, please, Mr. Reporter, as applying to the introduction of all exhibits."

(Respondent's exhibits 1 to 6, both inclusive, Witness Averitt, received in evidence.) (Test. 17–25.)

That 10-day period afforded me all the opportunity I want to prepare for the defense of this case. The rules are there and if I observe them, I think everybody else ought to observe them. (Tes. 26.)

It is my thought that the Commission in determining the propriety of our proposal, reducing rates from Indiana mines to Rockford and Freeport, should be governed solely by the distance over the Milwaukee Railroad, regardless of the distance which may
130 apply from other mines in the Brazil-Clinton group, or the Linton-Sullivan group. That is all they have before them and that is all they should consider.

"Q. Do you think that there is little likelihood of other lines in the Brazil-Clinton group and the Linton-Sullivan group applying the same rate in the event that your reduced rate is permitted to be the same rate in the event that your reduced rate is permitted to become effective?

"A. If they do, I think they should properly go over the same hurdles that I have got to go over."

Summing it all up, I think they should totally ignore the distance over routes other than the Milwaukee, in determining the rates to Rockford and Freeport, from those two northern Indiana groups. It has been ignored in the case of other groups, as I pointed out, groups operating over mileages from central Illinois that are in excess of the mileage, the short-line mileage, from southern Illinois. And further than that, I do not think it would make any difference what the other lines publish from the Clinton and Linton groups, because 99 percent of the coal that moves to Rockford and Freeport from Indiana moves over our railroad.

Referring to exhibit 1, showing the mileage from Mt. Olive to Rockford, via the Wabash: I am not familiar with the fact that the Illinois Central serves Mt. Olive as well as the Wabash. I do not know that.

"A. Let me ask you——

"Q. Yes?

"A. Do they ship any coal over the Illinois Central to Rockford and Freeport?

"Q. Well, I am not on the witness stand now, Mr. Averitt.

"A. Oh!"

131 The Illinois Central serves Mt. Olive, and it also serves Freeport and Rockford. As to why, knowing that, I did not show the mileage from Mt. Olive via the Illinois Central as well as the Wabash, on my exhibit 1, to Freeport and Rockford: My understanding is that the mine is served by the Wabash Railroad, and this exhibit purports to show the distance via the Wabash Railroad and not via some line that does not get into the mine. I did look into the question of whether or not the Illinois Central could handle coal

from the mines at Mt. Olive direct; I found that they did not handle any; the coal from Mt. Olive, of the Consolidated Coal Company, moves via the Wabash. Taking the mines on the Wabash at Mt. Olive, I understand that the Illinois Central absorbs the Wabash switching at Mt. Olive, if they have an opportunity. Assuming that they do have an opportunity, that would not materially change my exhibit 1; all that the exhibit purports to do is to show the Wabash mileage. I do not think you can take advantage of a mileage that you do not use, just at some time or another. I am advised that they are not used; personally, I do not know; I have never been down there to see and check the interchanges, to see whether they are used or not.

In connection with the rates applicable via our line from the Brazil-Clinton district, we do not have any washing-in-transit arrangement applicable in connection with those rates. We make an allowance for moisture in connection with those rates, the same as all the other Illinois lines allow—the same allowance. The allowance for the weight of the moisture is made at the time the shipment is made, but that is not involved in this case. The coal is not dried prior to shipment; it is dewatered to a certain extent. Some of the moisture is taken out. The water that we make an allowance
132 for is not taken out; there is still moisture in the coal after it is dewatered. If that has anything to do with it, we will go into it. But I submit that what we do, or what the operator does under the washing arrangement at the mines, has nothing to do with this proposition. I do not know if the operator charges for the full weight of the coal; I am not interested in what the operator does.

"Mr. ROSENBAUM. Well, he stated that they make an allowance for moisture, and he has also admitted that some of the moisture is taken out from the coal.

"Exam. TREZISE. Now, you ask——

"The WITNESS. But not in excess of what the coal contains when it is billed out, on which the moisture allowance is applied. Our practice in Indiana is not any different than what it is in Illinois, if there are any washeries in Illinois; and it is a practice that has been in effect for 25 years. That is, the publication has been there, but it has only been within the last 4 years that there has been any coal washed in Indiana."

In connection with such a movement, I never checked up on the weight at the destination as compared with the billing point. The allowance that is made is a maximum allowance that the shipper is permitted to deduct; if it is not the maximum he does not deduct it. We have no washers in the Clinton district; there are two in the Linton District on our line. (Tes. 27–34.)

I think that all of the rates in Illinois, Indiana and Western Kentucky, to Rockford and Freeport, are less than reasonable maximum rates. I do not know whether the fact that they are less than rea-

sonable maximum rates had anything to do with—or led to the Illinois Commerce Commission reducing the rates from Illinois to Rockford and Freeport. I do not know what went through the mind of the Illinois Commerce Commission, no; that is beyond
133 me. There are a large number of other points of origin in the Brazil-Clinton group that take the same rate to Rockford and Freeport as the present rates from our points of origin. I do not know how many other points of origin there are in the Brazil-Clinton district; in these days these mines are going down very rapidly in Illinois and Indiana.

"Q. Your exhibit attached to your answer shows some 23 billing points; is that about right, Mr. Averitt?

"A. Well, there are 25 mines on our railroad in both the Clinton and Linton districts."

We have only four billing points in the Clinton district. There are about 25 mines in the Linton district; the billing points do not reflect how many mines there are.

The effect of the going into effect of the proposed rates would not be to split the Brazil-Clinton group, not on our railroad. As far as the group as a whole is concerned, I do not think it makes any difference. It would mean we would have one rate and the Pennsylvania would have another, but neither the Pennsylvania nor the Chicago & Eastern Illinois, nor the Monon, nor any of the rest of the lines, are a factor in this situation; they do not ship any coal there, anyway. In the Sullivan-Linton district we have 7 billing points; the exhibit attached to my answer shows there are about 40 billing points in there that take the same rate to Rockford. It will speak for itself. There is a 5-cent differentials between the Brazil-Clinton district and the Sullivan-Linton district to Rockford. I will have to explain, as I explained before, the agreement of 15 or 20 years ago was to carry from the Clinton-Brazil district, the Springfield rate as a minimum, at Joliet, Aurora & Rockford.
134 The Princeton district is south of Linton. The differential that has existed between the Brazil-Clinton district and the Sullivan-Linton and Princeton districts, on coal moving to Rockford, is 7 cents per ton. That is getting to be a very important district. There are two or three mines down there in the Princeton district that produce three or four thousand tons per day.

South of the Princeton district lies the Boonville district; it has a differential of 3 cents over the Princeton district. As to what would be the effect if these was a reduction in the rates from the Brazil-Clinton district, and the Sullivan-Linton district, to any of these competitive points in the northern part of Illinois, with reference to the preservation of the differentials in the Indiana groups: I think I can tell you there would be a suspension case. I have no opinion as to whether the rates from the other groups or districts would be reduced, because there would probably be a sus-

pension case, and I cannot guess what would happen. I am more or less lukewarm about the preservation of groups and the preservation of differentials; however, I do not object very much to you having a differential in Springfield—in the Springfield group, if you want it.

"Q. Now, as I understand your testimony, you base your case wholly upon the difference in distance as shown by your exhibits; in other words, it is a question of mileage. Is that correct, Mr. Averitt?

"A. Well, I explained, that is usual in these later days. All you do is to take a yardstick and measure the distance, and there you have got the rate.

"Q. Had you compared the mines, we will say, in the northern portion of the Springfield *gourp*, which are directly opposite—you might say opposite the Brazil-Clinton district, the mileages would have been somewhat different, would they not?

135 "A. Why, I think that you can figure out almost anything you want to find out, on these mileages. I think you could figure that—you show——

"Q. Yes?

"A. (Continuing.) In your protest of these rates going into effect, the distance from Springfield as 198 miles.

"Q. And you do not have any such mileage as that from the Brazil-Clinton district?

"A. Well——

"Q. To Rockford.

"A. 231 is the mileage I show on the exhibit, and that is all I claim."

Inquiring if I would have any objection to the publication of rates from Springfield, based upon their mileage, if I am permitted to publish rates from Brazil-Clinton and Linton-Sullivan districts on my mileage: My objection is not going to cut any ice about that.

Referring to exhibit 1: Mt. Olive is located in the southern part of the Springfield group; I said it was near East St. Louis. As to what possible weight can a comparison of mileages from the Mt. Olive group to Rockford, as compared with the mileage from the Brazil-Clinton group have, and should I not compare the Mt. Olive mileages possibly with those from Evansville or southern Indiana, rather than the Brazil-Clinton district, if I want to be fair; no. The purpose of this exhibit was to answer Mr. Rosenbaum's protest. I did not have anything in mind, only what the exhibit shows. I was answering Mr. Rosenbaum's protest to the Commission that our rates ought to be suspended, and that he ought to operate a rate for 315 miles, of $1.70, and we should be denied the right to operate a rate for 231 miles, of $1.70. I said at the outset, I think that the rates are all less than reasonable maximum rates, and that if our rate, proposed rate of $1.70, is too low, then what can be said of Mr. Rosenbaum's rates? That is the purpose of that.

136 I have made an investigation as to whether or not there is a real necessity for a reduction in our rates to move the coal: Our movement of coal to Rockford is off very much, the same as it is in Illinois, or greater; but there will be another witness who will tell you about that. (Tes. 34–44.)

I think that it is true that 99 percent of our coal moving out of the Brazil-Clinton and Linton-Sullivan groups, that went to Rockford and Freeport, originates on the Milwaukee Railroad. I am too modest to attribute that to my success as a coal solicitor. I do not know if coal originating on the Milwaukee Railroad, in the Brazil and Linton districts, sells in Rockford at the same price as coal originating at mines on the Chicago & Eastern Illinois Railway, in the Brazil group. I do not sell any coal; there will be a coal man here.

"Q. (By Exam. TREZISE:) Mr. Averitt, the measure, the distance measure of your rate from Mt. Olive is not the distance that you have shown here, is it? In other words, what the examiner is inclined to believe is that there are shorter distances in that group, and two of them were put together to make the rate.

"A. Oh, you can find distances from 189 miles up to 377 miles, Mr. Examiner.

"Q. And if you put the two together, if you average them, or if you took the short line, or anything of that nature, you would have really a higher percentage of the Holmes & Hallowell scale from the group in which Mt. Olive is located; is that correct?

"A. Yes, sir; if you took the average of all of them.

"Q. The 55 percent of the Holmes & Hallowell scale there is rather shocking to the examiner, and I was just wondering what the real answer to that was.

"A. Well, the average to Rockford—and this is taken from exhibit no. 335, submitted by Witness Wildman in docket 23130—is 237.9 miles.

"Q. Oh, yes. Well, if you took——

137 "A. (Continuing.) Taking the average from all of the groups in Indiana—from the Clinton group the short-line distance, according to Mr. Wildman, is 226.4 miles. The average distance from all mines in the group is 270.9, according to Mr. Wildman; and according to Mr. Waffle, 267.

"Exam. TREZISE. Well, the gentlemen did not quite agree on that.

"The WITNESS. They never agree on anything.

"Mr. WILDMAN. It is not a very great difference."

In exhibit 3 I have a distance from the Springfield, Illinois, group of 198.1 miles, that is the short tariff route via the Illinois Central Railroad. Go over on page 2 of that exhibit, and you will see, Illinois Central, from nine points, 198.1 miles. I call your attention to the fact that that distance is figured over the Milwaukee Railroad from Mendota, and the Illinois Central does not voluntarily give the Milwaukee any business going to Rockford at Mendota. It has

got a line of its own. There is a rate that way, but they use it just as little as they can.

(Statement by Mr. Wildman:) That 198.1 miles represents the average distance from the nine points on the Illinois Central shown in their tariff, taking the Springfield rate. To Rockford, including Lincoln, I assume Lincoln is one of the points, and to Rockford the rate is as Mr. Averitt stated, applicable over the Illinois Central, Mendota, and thence the Milwaukee.

(Witness continuing:)

In the Commission's decision in docket no. 23130, the Commission said the rates from Illinois could not be found to be a burden on interstate commerce, unless and until the rates from the Indiana groups were advanced. They did not say which Indiana group or groups.

Coal rates have not been made on a mileage basis; that is my opinion—absolutely—in this proceeding. I think the group
138 basis should be continued; I have no desire in this proceeding to disturb any long-standing group adjustment. I am perfectly willing now—we do not reach these other Indiana groups, but I am willing to haul coal from any point in Indiana over the Milwaukee Railroad, to Rockford and Freeport for the same amount that I haul it for from Illinois, coal originating in Illinois. The same identical charge. The Big Four serves Illinois, and it also serves Indiana, and so does the Chicago & Eastern Illinois. We have routes with them via Momence and Delmar, and we have routes with them via Chicago. Now I am willing to haul Big Four coal, whether originating in Illinois on the one hand, or in Indiana on the other hand, for the same money that we haul it for from Chicago when it originates in Illinois.

Asking if I am contending for a lower basis of rates on coal from the Indiana mines, than from Illinois mines: I am contending for the same, and for the maintenance of an adjustment that has extended back for over a period of 20 years, and was not disturbed until your order reducing the rates in Illinois; and if those rates had been—it is only 2 or 3 miles from the edge of the Clinton district over to Illinois, and that coal field extends across the State; and if those mines had been located, some of them, a mile further west than they are, you would have reduced the rates under your order.

Referring to exhibit 4: In connection with my comparison to Rockford I have taken 4 origin points in the Brazil-Clinton group and found an average of 231 miles, while I have taken 75 of my points in the Central Illinois group and found an average distance of 269 miles. In both cases, I took all there was. All I am talking about is the Brazil-Clinton group; that is all the Commission has be-
139 fore it, the rates from the Clinton and Linton groups on the Milwaukee Railroad. Even there it shows a difference of 38 miles against the Central Illinois origins. Those 75 origins as shown from Central Illinois only include routes via which our line is a

party; via which the Illinois Commission reduced the rates. Our rates have been partially reviewed by the Interstate Commerce Commission.

Referring to exhibit 1: I show a mileage of 315 miles, the Wabash Railroad, Decatur, Illinois, Illinois Central.

"Q. Is it not a fact that the Illinois Central has a direct route of 248 miles from Mt. Olive to Rockford?

"A. Well, that is like talking about—you can find probably shorter routes than I have used here from Indiana; I do not know."

The route we used, so far as the Consolidated Coal Company is concerned, is not on the Illinois Central Railroad; it is on the Wabash.

Comparing like with like, that is the Illinois Central direct route from the Springfield mines to Rockford, the distance via the single line route of the Illinois Central is 236 miles, as my Exhibit 6 shows, as compared with our single-line haul from Brazil-Clinton of 231 miles.

I said I would have no objection to seeing the maintenance of long-established relationships as between the groups. By that I mean the relationship that existed prior to August 1930, when the intrastate rates to Rockford and Freeport, and these other stations, were reduced. The only reason they were not reduced when the Commission reduced the rates in Illinois, was because of the petition under the 13th section filed by Illinois, Indiana, and western Kentucky carriers. If I had known what I know now, the rates from Clinton would have been reduced immediately they were reduced from Illinois. I have learned something. (Tes. 44-54.)

140 As to why the Milwaukee joined with the Wabash in establishing a rate from say Mt. Olive to Rockford and Freeport: To meet short-line competition. If we did not have such a rate, by reason of the fact that the Illinois Central absorbs the Wabash switching at Mt. Olive, it is obvious that the Illinois Central would haul the business direct from Mt. Olive then to Rockford and Freeport. Where there is even a difference of 1 cent per ton in the rate via one route as against another, it will move the other route, to save the 1 cent per ton.

"Q. And that is why you have that rate, then, just to meet that Illinois Central competition from Mt. Olive to Rockford and Freeport?

"A. I do not know that we ever sat down and considered it that way, but we are considering rates from the Springfield group.

"Q. As a whole?

"A. Yes, sir."

I said I was agreeable to preserving the groups in Illinois and the differential adjustments. In this proceeding, we will not split the groups in Indiana. I have not split any group in Indiana. As to whether the going into effect of the proposed rates will split a group: We will have a lower rate than some other line does from

the same group to Rockford and Freeport, but that is not my fault; I only publish rates from our mines.

As to what effect it would have on other rates if the Interstate Commerce Commission allows the reduced rates here to take effect: I have said to the other lines, if they want to publish rates to Rockford and Freeport in connection with our line, we will accept the same revenue west of Chicago or west of our junction with the Indiana lines, that we receive on coal from Illinois. Now, if it is going to affect Indiana, I apprehend that Illinois, as they
141 have in this case will come along and say "you have got to suspend these rates; we are going to have an investigation into them." But I am not the custodian of the rates on the Chicago & Eastern Illinois, or the Big Four. I am with the Milwaukee. It is my thought that this is the thing we are willing to carry out, and so far as the other railroads are concerned, they can do as they please and we will stand the consequences. There was something said about low rates in Indiana. I am saying that the rates from the Clinton and Linton districts are not low rates—or not lower rates, compared to Springfield, Illinois. When I refer to rates from Indiana to Illinois, I refer to our proposed rate. And if some other line, some other direct line comes along from the Princeton district—now, personally, I do not think the rate from the Princeton-Boonville group could be justified, 7 cents, or 17 cents—12 cents over Clinton, the Clinton-Brazil rate. The average distance there is about 100 miles. The Commission has said on numerous occasions that the average distance of 100 miles between Springfield on the one hand, and southern Illinois on the other hand, is absolutely right. If that be true in Illinois, I do not know why it would not be good gospel over in Indiana.

We do not serve the Princeton-Boonville group. I think the Commission had in mind the Princeton-Boonville group to Rockford when they referred to the unusually low rates from Indiana to Illinois, in docket 23130; if they had all of the facts, they could not say that the rates from these mines that I am talking about, were not commensurate with, and on the same basis as, the rates from Springfield, Illinois, to Rockford and Freeport.

If these rates went in as I have proposed, I do not think other reductions would result in consequence thereof on other lines. If they did, they have protection in the Interstate Commerce Commission just as these gentlemen have tried to have you protect
142 them against our invasion. I have been in this a long time, and there has grown up the feeling that Illinois should have a wall built around it, and nobody ship coal into Illinois, but Illinois. And this is part of the plan. My answer to the question whether these rates if permitted to go into effect, would disrupt the rates in the general territory, is to let the future take care of itself. I am not going to anticipate what is going to be done. Here is a situation that I claim ought to be remedied.

I did say to the other lines that I would accept the same revenue from our junction points on coal from Indiana that I do from Illinois. What I have said is, if our division of the rates from Chicago to Rockford is 60 cents on coal moving via Chicago from southern Illinois, I will say to the Indiana lines, "I will haul your coal to Rockford for 60 cents; I do not care where it originates."

Confining ourselves to the Indiana mines, and inquiring if the Pennsylvania desired to reduce the rates from its lines in the Brazil-Clinton group to Rockford and Freeport, would we join in their rate, the same rate as we publish from our mines: My answer is yes. That includes all of them, all the way down, clear on down south to western Kentucky. I would be willing to make the same reduction in the rates from the other Indiana groups there, as I propose from the Brazil-Clinton and Linton-Sullivan groups, if they can get by. We have joined in rates from west Kentucky, and the rate was reduced 17 cents from west Kentucky. Now, when you are passing out 17 cents, why confine it to west Kentucky, or southern Illinois? Let it go all the way around. Give them all 17 cents. I would be willing to do that. I am advocating that.

143 My statement with respect to the present rates being reasonable maximum rates, includes all of the rates in Illinois; all of them that are involved in this hearing here, and that includes the rates to Elgin, and all the way along our line from the Chicago district to Rockford and Freeport. That is not confined to Rockford and Freeport alone.

I covered that, that even the present rates are not more than reasonable and explained it. (Tes. 54–62.)

(Witness excused.)

JONAS WAFFLE, managing director, Coal Trade Association of Indiana, Terre Haute, Ind., testified:

Our organization is a voluntary association, composed of coal operators who own and operate coal mines in the four major producing districts of Indiana. Of the total Indiana tonnage, our membership produces about 80 percent; of the total Brazil-Clinton and Linton-Sullivan group tonnage, approximately 90 per cent; and over 95 per cent of the tonnage loaded on the Milwaukee Railroad. I have been intimately associated with traffic and transportation work for about 30 years. Since January 1928 I have been connected with the association affairs of the Indiana coal operators, and during that time I have handled all their traffic and transportation problems. During the same period I have participated in all the major cases involving coal rates in the Midwest. I am familiar with the rate adjustment on coal and with the coal rate decisions handed down by the Commission during the past 20 years. I am also familiar with the economic and competitive problems of the mining industry. The exhibits I will introduce were prepared by me or under my supervision. The destinations involved in this proceeding, particularly the important industrial cities of Rockford and Freeport,

are natural, logical, and highly competitive markets for coal produced in Illinois, Indiana, and western Kentucky, and for that reason it is imperative that the rates from all competing mines be placed on a proper relationship.

144 Prior to the reductions required by the Illinois Commission in dockets nos. 13558 and 13569 to Freeport and Rockford, the rates from the Brazil-Clinton and Linton-Sullivan groups were 30 and 25 cents per ton, respectively, under the rates from southern Illinois. The Brazil-Clinton rate was the same as central Illinois and the Linton-Sullivan rate 5 cents per ton higher.

When these Illinois reductions were made, the Indiana operators petitioned the carriers to make corresponding reductions and thus maintain the relationship which had long existed between the rates from the Illinois groups, on the one hand, and the Indiana groups on the other. They refused to do so on the ground that a pending petition for a 13th section investigation alleged that the reduced Illinois rates discriminated against the Indiana rates, and for that reason could not make any changes in the Indiana rates until the 13th section case was finally adjudicated.

The Milwaukee Railroad having suffered an increasing loss of traffic from the unjust rate situation erected by the reductions in the Illinois rates, reduced the rates from its Brazil-Clinton and Linton-Sullivan mines to Rockford, Freeport, and intermediate points so as to restore the relationship that existed prior to the Illinois reductions.

We are of the opinion, and believe it can be successfully demonstrated, that the suspended rates are fully justified, not only for application from the Milwaukee Railroad mines, but from all mines in the Brazil-Clinton and Linton-Sullivan groups. I might say that beginning with the map the exhibits are in the order in which they will be introduced.

My first exhibit, no. 7, is a map showing the line of the Milwaukee Railroad from the Brazil-Clinton and Linton-Sullivan groups in Indiana to Rockford, Freeport, and the intermediate points involved in this proceeding. The suspended rates of $1.70 and

145 $1.75 apply to Rockford, Freeport, and as far east on the main line as Bensenville and south to Duffin on the Delmar-Kirkland line.

The Milwaukee Railroad operates through train service from West Clinton, Indiana, to Joliet, Illinois, an operating division point, and from Joliet to Savannah, the terminus of the Illinois division, and it also operates from West Clinton to the Bensenville yard via Blue Island.

Shipments for points Kirkland and west and handled via the Joliet route, and those for points east of Kirkland, to points north of Chicago and for local deliveries on the Milwaukee in Chicago are handled in the West Clinton-Bensenville trains.

Shipments for connecting lines at Chicago, with which the Milwaukee has no direct connection, are delivered to the Indiana Harbor

Belt or Baltimore & Ohio Chicago Terminal at Blue Island for transfer to such connecting lines.

My next exhibit, no. 8, consisting of four pages, shows the average of the short tariff route distances from the Brazil-Clinton, Linton-Sullivan and southern Illinois groups to Rockford, Freeport, and the intermediate points shown on my preceding exhibit. The current rates are shown in column 6, and the shortest tariff routes, over which the mileages were determined, are shown in column 7.

My next exhibit, no. 9, consisting of three pages, shows the average of the short tariff route distances from Central Illinois to Rockford, Freeport and intermediate points. Rates and routes are shown in columns 5 and 6.

My next exhibit, no. 10, contains a recapitulation of the average distances included in the two preceding exhibits. The grouping of the stations will be explained in connection with a later exhibit.

146 My next exhibit, no. 11, contains the mileage scale prescribed in docket 23922 and related cases, for application from the Indiana mines to central eastern Illinois. Opposite each of the rates various per cents of the scale are shown, to which reference will be made in some later exhibits.

In that exhibit, I have extended the scale as prescribed in the decision of the Commission to 400 miles, at 8 cents for each 25 miles. That is the rate of progression for the last 100 miles in the block. I have done that because some of the distances that we will use in the comparison exceed the distance prescribed in the scale.

My next exhibit, no. 12, shows the scale of rates prescribed in the Holmes & Hallowell Company case, 69 I. C. C. 11, to which reference will also be made in later exhibits. The various percentages of the scale, from 60 percent to 99 percent are shown in the exhibit.

My next exhibit, no. 13, compares the rates and distances from the Chicago, Milwaukee, St. Paul & Pacific mines in the Brazil-Clinton and Linton-Sullivan districts with those from southern Illinois to Rockford, Freeport, and intermediate points. The figures in columns 5 and 6 are the distances from Chicago, Milwaukee, St. Paul & Pacific mines, via that line direct, to the destinations shown in the exhibit. The Indiana distances are confined to those from Milwaukee mines for the reason that the rates under suspension apply only via that line. The distances in column 7 are the average of the entire group via the short tariff routes. These average distances apply from all mines that enjoy the $2 rate from southern Illinois to Rockford and Freeport.

The percentage relationship of the suspended Indiana and southern Illinois rates of the 23922 scale extended, and the Holmes & Hallowell scale, are shown in columns 8 to 10 and columns 11 to 13.

147 Columns 14 to 17 show constructed Indiana rates based on the southern Illinois per cents of the 23922 and Holmes & Hallowell scales shown in columns 10 and 13. Columns 18 and 19 show for Brazil-Clinton and Linton-Sullivan the average of the constructed rates in columns 14 to 17.

Using the combined average distances in Rockford and Freeport, shown in item 1, the rates from Brazil-Clinton and Linton-Sullivan would be $1.68 and $1.74 under the 23922 scale percents, and $1.54 and $1.69 under the Holmes & Hallowell scale percents, the average under both scales being $1.61 from Brazil-Clinton, and $1.72 from Linton-Sullivan.

Item 2 includes the remainder of the stations to which the $2 rate applies from southern Illinois. The result for this group is rates somewhat lower than those shown for Rockford and Freeport, the average, shown in columns 18 and 19, being $1.55 from Brazil-Clinton, and $1.66 from Linton-Sullivan.

Item 3 includes stations to which the southern Illinois rate is $2.10. To this group the Indiana rates would be $1 58 and $1.75 under the 23922 scale percents, and $1.40 and $1.59 under the Holmes & Hallowell scale per cents, with average rates of $1.49 from Brazil-Clinton, and $1.67 from Linton-Sullivan.

To DeKalb the southern Illinois rate is $1.90 and for that reason is shown separately. The southern Illinois percents would produce rates to DeKalb of $1.42 and $1.57 under the 23922 scale percents, and $1.29 and $1.46 under the Holmes & Hallowell scale per cents, with average rates of $1.36 from Brazil-Clinton, and $1.52 from Linton-Sullivan—considerably less than the rates under suspension.

Because of their class [close] proximity to Rockford and Freeport, and the fact that they have the same rate from southern Illinois,
148 the stations in item 2 should properly be grouped with Rockford and Freeport in determining the measure of the Indiana rates, and their relationship to the southern Illinois rate.

The combined distances to the points in items 1 and 2, as shown in item 5, result in rates of $1.61 and $1.74 under the 23922 scale, and $1.46 and $1.65 under the Holmes & Hallowell scale, the average of the two being $1.54 from Brazil-Clinton and $1.70 from Linton-Sullivan.

Item 6 is a composite of all the destinations in the exhibit, and is included solely for the reason that the suspended Indiana rates are the same to all the destinations shown in the exhibit.

That concludes my comment on that exhibit.

My next exhibit, no. 14, prepared in the same form and containing the same type of data, compares the suspended rates with those from central Illinois, based on distances from the Milwaukee mines via that line direct, with the average short tariff route distances from oil [all] points in the central Illinois group.

The average of the distances to Rockford and Freeport under the 23922 scale per cents will preoduce rates of $1.70 from Brazil-Clinton and $1.76 from Linton-Sullivan, almost identical with the rates under suspension. Under the Holmes & Hallowell scale per cents, the rates would be $1.70 from Brazil-Clinton and $1.86 from Linton-Sullivan, the average under both scales being $1.70 from Brazil-Clinton and $1.81 from Linton-Sullivan.

As shown opposite item 5, the average rate from Brazil-Clinton would be $1.61, and from Linton-Sullivan $1.78; and for all destinations included in the exhibit, shown in item 6, the average rate would be $1.54 from Brazil-Clinton and $1.70 from Linton-Sullivan.

Except for the line of the Illinois Central from the Linton-Sullivan group, which serves an insignificant tonnage, the Milwaukee is the only direct single line route from the Indiana coal fields
149 to Rockford and Freeport; and in fact, to a number of intermediate points. It also handles the major part of the tonnage from the Brazil-Clinton and Linton-Sullivan groups to Rockford and Freeport. From southern Illinois there is one direct line to Freeport, namely, the Illinois Central, and two direct lines to Rockford, namely, the Chicago, Burlington & Quincy and Illinois Central. These are the two principal coal-carrying lines from the southern Illinois district to those two points; and they can handle the major part of the tonnage that goes into those points. That is to say, they handle the tonnage as destination lines.

A comparison of the rates and distances over the direct single-line route of the Milwaukee Railroad from its Brazil-Clinton and Linton-Sullivan mines with those over the direct single-line routes from southern Illinois, is shown in my next exhibit, no. 15.

The distances to Rockford are shown in items 1 to 3, to Freeport in items 4 to 6, and a composite of both points in items 7 to 9. Based on the distances shown in items 1 to 6, the rates to Rockford would be Brazil-Clinton $1.61 and $1.49, average $1.55; Linton-Sullivan $1.68 and $1.64, average $1.66.

To Freeport the rates would be Brazil-Clinton $1.78 and $1.75, average $1.77; Linton-Sullivan $1.92 and $1.91, average $1.92 To Rockford and Freeport, based on the combined distances shown in items 7 to 9, the Indiana rates would be Brazil-Clinton $1.74 and $1.59, average $1.67; Linton-Sullivan $1.81 and $1.74, average $1.78. These average rates are 3 cents less and 3 cents higher than the suspended Illinois rates. Those are for the most distant points in this destination group involved in this proceeding. They are in the extreme western end of the territory involved in this suspension case.

My next exhibit, no. 16, contains a similar comparison via the Milwaukee and the direct single-line routes from central Illinois. There are three direct routes from central Illinois to Rockford, namely: Chicago & North Western, Chicago, Burlington &
150 Quincy and Illinois Central, and two direct routes to Freeport, namely: Chicago & North Western and Illinois Central.

Predicated on the central Illinois percents of the two scales, constructed rates from Indiana are shown in columns 7 and 8. To Rockford the rates would be: Brazil-Clinton $1.69 and $1.66, average $1.68; Linton-Sullivan $1.76 and $1.83, average $1.80. To Freeport the rates would be: Brazil-Clinton $1.76 and $1.86, average $1.81; Linton-Sullivan $1.90 and $2.03, average $1.96. Based on the

combined average distances to Rockford and Freeport, the Indiana rates would be: Brazil-Clinton $1.76 and $1.75, average $1.76; Linton-Sullivan $1.83 and $1.92, average $1.87.

My next exhibit, no. 17, compares the rates and distances over the short rate-making line routes of the Milwaukee Railroad from its Brazil-Clinton and Linton-Sullivan mines with those via the short rate-making lines from southern Illinois to Rockford and Freeport.

Items 1 to 3 show the distances over the short rate-making lines to Rockford; items 4 to 6 to Freeport; and items 7 to 9, the composite average distance to Rockford and Freeport.

Using the percents shown in columns 5 and 6, the rates from Indiana to Rockford would be: From Brazil-Clinton $1.72 and $1.64, average $1.68; Linton-Sullivan $1.78 and $1.80, average $1.79. To Freeport, the rates would be Brazil-Clinton $1.78 and $1.67, average $1.73; Linton-Sullivan $1.92 and $1.87, average $1.90.

Based on combined average distances to Rockford and Freeport, the rates developed in columns 7 and 8 are: Brazil-Clinton $1.73 and $1.63, average $1.68; Linton-Sullivan $1.87 and $1.79, average $1.83.

The distance from these groups to Freeport is the distance via the Milwaukee direct; that line has a short tariff route to Freeport,
shorter than the one shown there; that is to say, a route
151 over which the present rate of $1.87 applies to Freeport. They
did not publish the $1.70 rate via that route; they confined it to their own route.

My next exhibit, no. 18, compares the suspended Indiana and southern Illinois rates, based on the average of the short tariff route distances from all mines in the Brazil-Clinton, Linton-Sullivan, and southern Illinois groups. That is to say, the average distance shown in columns 5 and 6 is the average distance from mines on all origin railroads in the group, via their short tariff route. The details of that are shown in my previous exhibit no. 8. (Tes. 64–76.)

The combined Rockford and Freeport distances would produce rates under the 23922 scale percents of $1.74 and $1.81, and under the Holmes & Hallowell scale percents rates of $1.62 and $1.76, the average being $1.68 from Brazil-Clinton and $1.79 from Linton-Sullivan. The combined distances in items 1 and 2, shown in item 5. result in rates of $1.74 and $1.81 under the 23922 scale, and $1.61 and $1.72 under the Holmes & Hallowell scale, with average rates of $1.68 from Brazil-Clinton and $1.76 from Linton-Sullivan. The latter rates are very close to those under suspension.

My next exhibit, no. 19, compares the Indiana and southern Illinois rates, based on the short rate making line routes from the Brazil-Clinton, Linton-Sullivan, and southern Illinois groups to Rockford, Freeport, and intermediate points. The latter references opposite the distances identify the routes over which the distances were determined.

The combined average distances to Rockford and Freeport produce rates of $1.71 and $1.85 under the 23922 scale percents, and $1.66 and $1.81 under the Holmes & Hallowell scale percents, the average being $1.69 from Brazil-Clinton and $1.83 from Linton-Sullivan.

152 Item 5 indicates that the average rate for all of the points that take the $2 rate from southern Illinois, shown in columns 18 and 19, would be $1.69 from Brazil-Clinton and $1.80 from Linton-Sullivan.

While we do not believe that short rate making line distances should be used in determining the relative level of rates, or the relationship of rates, we have submitted the preceding exhibit because that theory was used by the Commission in docket 23130 in determining the rates from southern Illinois.

As the rates from Brazil-Clinton and Linton-Sullivan groups were involved in the Illinois 13th section case, docket 23130, I wish at this time to point out an erroneous statement of fact as to the relative level of the rates to Rockford, Freeport, and Dixon, from southern Illinois, and those from Brazil-Clinton and other Indiana groups, which appears on pages 549 and 550 of the original report in docket 23130. Beginning with the last paragraph on page 549 of the report, it is stated:

"While it is evident that a number of the assailed rates from Illinois groups to Rockford, Freeport, and Dixon are well below the reasonable level of rates in this territory, that appears to be true also of most of the rates from the Indiana groups to the same destination."

Immediately following the aforesaid statement, an erroneous comparison, based on percents of the Holmes & Hallowell scale, is made of the rates from the Brazil-Clinton and southern Illinois groups to Dixon. The report states:

"The rate from the Brazil-Clinton group to Dixon is only 66.5 percent of the Holmes & Hallowell scale, which is the same percentage that the southern Illinois-Dixon rate is of the scale."

153 The 66.5 percent shown for southern Illinois is predicated on the short rate-making line distance of 297.7 included in the table at the top of page 548 of the report. All the mileages in that table were taken from Wildman's exhibit no. 335. However, in determining the Brazil-Clinton group rate percentage, the Commission used the average distance of 260 miles from the entire group, also shown in Wildman's exhibit no. 335. Had the Commission, as it did with the southern Illinois rate, used the short rate making line distance from Brazil-Clinton to Dixon of 228.4 miles, shown in the upper table on page 548, the $1.74 rate from Brazil-Clinton to Dixon would have been shown to be 72 percent of the Holmes & Hallowell scale in lieu of 66.5 percent.

The same error was made in comparing the rate from Brazil-Clinton to Freeport with the rates from southern Illinois to Free-

port and Rockford. The report shows the southern Illinois rate to Freeport and Rockford to be 64 and 66 percent of the Holmes & Hallowell scale, determined by using the short rate making line distance of 337.9 miles to Freeport, and 328.7 miles to Rockford. However, in arriving at 67 percent for the rate from Brazil-Clinton to Freeport, the Commission used the average distance from the entire group shown in the lower table on page 546. The rate from Brazil-Clinton to Freeport would have been shown to be 72 percent instead of 67 percent had the Commission used the short rate making line distance of 258.6 miles shown in the upper table on page 548.

The report also fails to mention the fact that the rate from Brazil-Clinton to Rockford, based on the short rate making line distance of 226.5 miles, is 77 percent of the Holmes & Hallowell scale, compared with 66 percent from southern Illinois to Rockford.

What the Commission actually did was to use the short rate making line distance from southern Illinois, and the average
154 distance from all the mines in the Indiana origin group, and, based on those comparisons, made the following finding:

"The assailed rates to Rockford, Freeport, and Dixon should not be found to be unlawful under section 13 of the act until and unless the interstate rates from Indiana groups to the same destinations are increased to a level more nearly commensurate with the general level of the rates on coal to this territory."

In the report in 23130, there was no comparison made with the other Indiana groups, of the percentages of the scale, at this point of the report; it was confined largely to the Brazil-Clinton comparison with Dixon, and Brazil-Clinton with Freeport, no reference being made to the comparison, Brazil-Clinton with Rockford. The short rate-making line from the Brazil-Clinton or the Linton-Sullivan group would make a lower distance to these points than the average distance from either one of those groups. The short rate-making line distance from either of those groups obviously would be less than the average distance from the entire group. That is true of southern Illinois, the short rate-making line distance shown in the table at page 548 is considerably less than the average distance from the entire southern Illinois group. I mean to infer that there were lower distances shown in 23130 than the distances that the Commission used, from these Indiana groups—absolutely. I think my statement has made it very clear that, as far as Indiana is concerned, you took the average—the Commission took the average from the group, and for southern Illinois, it took the distance over the line of the Illinois Central Railroad from southern Illinois to Rockford, Freeport, and Dixon. All I am trying to do is to point out, had you used the short rate-making line distance from Brazil-Clinton as you did from southern Illinois, the percentage—the Indiana rates—would be shown to be considerably higher than southern Illinois.

155 The short line of the Illinois Central from southern Illinois to Rockford is over its own line to Mendota, and then it

uses the rails of the Milwaukee from Mendota to Rockford; or, direct to Freeport, and thence over its own line east for 28 miles, would result in a longer distance than via the Mendota route. In the table of mileages shown on page 548 of the report, the short line distances shown there, both from Illinois and from Indiana, are the short-line distances from those various groups. The objection I have is that when the comparison is made, using the percentages of the Holmes & Hallowell scale, they used those distances from the Illinois groups, but used other distances from the Indiana groups.

"Q. (By Exam. TREZISE.) May I ask you about that report at page 568, where the distance is shown from the Brazil-Clinton group to Rockford, Illinois. The lowest possible distance shown there in that record was 244 miles. You call that the average distance?

"A. It is shown in this—just let me, for the purpose of the record, say this, and then I will try and answer your question. I am reading now from page 547 of the report.

"These varying distances serve to emphasize the difficulty in arriving at the proper distances to be used for purposes of comparison. One of the best comparisons of record is an exhibit from which the following statement is prepared, setting forth the short rate-making routes, with distances, from a number of actual operating points in southern Illinois, in comparison with the same information from Indiana mines." Then follows the table at the top of page 548, which contains the distances on which the Commission arrived at 64 percent and 66 percent of the Holmes & Hallowell scale for the southern Illinois rates. In the same scale—in the same table is
156 the short-line distance of 226.5 miles from the Brazil-Clinton group—which, by the way, was not used in determining the percentage of the Brazil-Clinton rates is of the Holmes & Hallowell scale.

In that connection the statement on page 568, that the mileages shown on 568 were the lowest mileages appearing in the record, is inconsistent with the table appearing on page 548. Asking if those 80 billing points from southern Illinois have any bearing: I do not think it has any bearing, because the distance of 328.7 miles is the distance from the mines on the Illinois Central Railroad in southern Illinois, and obviously, there are not 80 billing points on that one railroad. Just how it happened to creep in there, I do not know. It is just one of those things that gets into a case, when it is made up. I do not think it has any bearing on the mileages shown in that table. The percentages I have just stated in my evidence for the average distance, that appear in the report in 23130 are the percentages applied to the average distances from the Indiana groups appearing in Wildman's exhibit no. 335 in that case. The point we are trying to make is that apparently, in comparing the southern Illinois and Indiana rates, by the use of the Holmes & Hallowell scale—whether that is a proper yardstick or not—they did not compare, that is the Commission did not compare like things. They used the dis-

tance of the Illinois Central from southern Illinois to Rockford, and the average distance from all of the mines in Indiana, which included the distance from mines on the Chicago, Milwaukee, St. Paul & Pacific, the Chicago & Eastern Illinois, the Baltimore & Ohio, the Cleveland, Cincinnati, Chicago & St. Louis, and the Pennsylvania, some of which are circuitous routes.

Now, if the Commission is going to use the short rate-making line distances from southern Illinois, to be absolutely fair with Indiana, they ought to use the same kind of yardstick. If the
157 percentages had been constructed on the average distances from southern Illinois, they would have been much lower percentages of the Holmes & Hallowell scale than those shown in the report, and obviously so. That appears in some of my exhibits here. I have prepared an exhibit in this case that may clarify the situation on that. For the purpose of showing the correct relative percents of the Holmes & Hallowell scale, Brazil-Clinton and Linton-Sullivan versus southern Illinois, and the rates that would result from the application to the Indiana distances of the southern Illinois percents of the Holmes & Hallowell scale, I offer exhibit no. 20.

The mileages included in columns 5 to 7 are those shown in the table at the top of page 548 of the report in docket 23130, which distances, as previously stated, were taken from Wildman's exhibit no. 335. As shown in columns 8 and 9, the Indiana rates yield a higher percent of the Holmes & Hallowell scale than the rates from southern Illinois. By using the southern Illinois percents the Brazil-Clinton and Linton-Sullivan rates to Rockford would be $1.59 and $1.80, and to Freeport $1.70 and $1.90, the average to both stations being $1.63 and $1.79. The latter result compares very favorably with that shown in exhibit no. 18, which exhibit shows the average for Rockford and Freeport to $1.62 from Brazil-Clinton and $1.76 from Linton-Sullivan.

As reference has been made to Wildman's exhibit no. 335, I have reproduced from that exhibit the distance shown therein from Brazil-Clinton, Linton-Sullivan, central Illinois, and southern Illinois, to Rockford and Freeport, and submit same as my exhibit no. 21.

As pointed out earlier in my testimony, prior to the reductions from the Illinois mines to Rockford and Freeport, the Brazil-Clinton rate was 30 cents under southern Illinois and the same
158 as central Illinois. This is the basis that generally obtains in southern Wisconsin, as disclosed by my next exhibit, no. 22, which includes rates, distances, and differentials to seven points in that State. Distances shown are the average of the short-tariff routes.

The differentials, Brazil-Clinton under southern Illinois to Wisconsin, are 30 to 35 cents, according to the destination. To that part of Wisconsin located on and east of the Minneapolis, St. Paul & Sault Ste. Marie from the Illinois-Wisconsin line to Fond du Lac,

thence on and east of a line through Oshkosh, Appleton, and Green Bay, and thence over the line of the Milwaukee to Ontonagon, Michigan, the differential, Brazil-Clinton under southern Illinois, is 35 cents; to points west of the foregoing line the differential in 30 cents. The rates from Linton-Sullivan to both sections of Wisconsin are 10 cents per ton higher than Brazil-Clinton.

Under the average distances to the seven points, Brazil-Clinton is 127 miles less than southern Illinois, for an average difference in rate of 32 cents. Compared with central Illinois, the difference is 8 miles in favor of Brazil-Clinton, for a difference in rate of 2 cents.

The distance, central Illinois under southern Illinois, is 119 miles, for which the differential is 30 cents per ton. As shown in exhibit no. 13, the average distance from the Milwaukee mines in the Brazil-Clinton group to Rockford and Freeport is 130 miles less than the average distance from the southern Illinois mines, or substantially the same as the difference of 127 miles between Brazil-Clinton and southern Illinois to the seven Wisconsin points.

The differential distance, Linton-Sullivan under southern Illinois, to the seven points, is 95 miles, and the difference in rates is 22 cents. From the Milwaukee Linton-Sullivan mines to Rockford and Freeport the distance is 86 miles less than the average of
159 the entire southern Illinois group, or substantially the same as those shown for the seven Wisconsin points.

The distance, Linton-Sullivan over central Illinois, to the seven Wisconsin points is 24 miles, for a difference in rate of 8 cents in favor of central Illinois.

We are of the opinion that the Wisconsin differentials of 30 and 20 cents should be used in fixing the rates from Brazil-Clinton and Linton-Sullivan to Rockford. This will necessitate widening the differential between Brazil-Clinton and Linton-Sullivan to 10 cents in lieu of the present difference of 5 cents. If that were done, the application of the Wisconsin differentials would result in rates of $1.70 from Brazil-Clinton and $1.80 from Linton-Sullivan. That is based on the $1.70 rate from Brazil-Clinton becoming effective. The basic data for mileages and rates to the seven Wisconsin points shown on the last exhibit are included in my next exhibit, no. 23.

Throughout my testimony I introduced a number of exhibits in which rates are constructed from Brazil-Clinton and Linton-Sullivan to Rockford, Freeport, and intermediate points, based on the percentage relationship of the southern and central Illinois rates to those in the 23992 and Holmes & Hallowell scales.

My next exhibit, no. 24, is a recapitulation which shows the average of all the contracted Indiana rates.

To Rockford the average of the constructed rates thus developed are: $1.69 and $1.60 from Brazil-Clinton and $1.76 and $1.76 from Linton-Sullivan; to Freeport, $1.76 and $1.71 from Brazil-Clinton and $1.88 and $1.88 from Linton-Sullivan; and to a combination of Rockford and Freeport, $1.72 and $1.64 from Brazil-Clinton, and

$1.81 and $1.80 from Linton-Sullivan. The average to both
160 points under the two scales would be $1.68 from Brazil-Clinton and $1.80 from Linton-Sullivan. The latter are substantially the same as the rates that would obtain if the Indiana rates were fixed 30 and 20 cents per ton under southern Illinois as they are to southern Wisconsin.

For the purpose of arriving at a grand average of the various mileages from Brazil-Clinton, Linton-Sullivan, and southern Illinois, shown in the several preceding exhibits, I have set out in my next exhibit, no. 25, the distances shown in such previous exhibits. The result is a grand average distance of 254 miles from Brazil-Clinton, 294 from Linton-Sullivan, and 354 miles from southern Illinois. These grand average distances result in spreads in distances under southern Illinois of 100 miles from Brazil-Clinton and 60 miles from Linton-Sullivan. The mileages shown in this exhibit are predicated on the combined average distance to Rockford and Freeport shown in each of the individual exhibits listed in the left-hand column. These spreads in distance will be used in connection with my next exhibit.

For the purpose of developing average differentials for distances of 60 and 100 miles, shown in the preceding exhibit, I have set out in my next exhibit, no. 26, differentials per ton which result from rates fixed or approved by the Commission from Illinois and Indiana mines to East St. Louis and Chicago in the decisions listed under columns 6 and 7.

The first panel of the exhibit includes differences in distance ranging from 50 to 70 miles, that is for a spread 10 miles below and 10 miles above 60 miles, and the average differential is 18 cents. This difference in distance is identical with the difference in distance, Linton-Sullivan under southern Illinois, shown in the preceding exhibit, for which difference in distance we are proposing a differential of 20 cents.

161 The second panel of the exhibit includes differences in distance ranging from 83 to 120 miles, that is, a spread 20 miles below and 20 miles above 100 miles. The result is an average spread in distance of 103 miles, and an average differential of 33 cents. This difference in distance is comparable with the spread of 100 miles, Brazil-Clinton under southern Illinois, shown in the preceding exhibit, for which difference we are proposing a differential of 30 cents per ton.

The average of the 20- and 30-cent differentials proposed from Brazil-Clinton and Linton-Sullivan is 25 cents; the average of the 18- and 33-cent differentials shown in this exhibit is 25.5 cents, or within .5 cent of the average of the differentials proposed from Brazil-Clinton and Linton-Sullivan.

That concludes my statement.

(Intervener's exhibits 7 to 26, inclusive, Witness Waffle, received in evidence.) (Tes. 76–91.)

CROSS-EXAMINATION

I want to correct your statement that I have based most of my comparisons on southern Illinois. If you will look back at the exhibits, you will find that I have used central Illinois in a number of exhibits. In my testimony I did stress southern Illinois and perhaps central Illinois more than Springfield, because that was the situation that was stressed in 23130. As to whether I think the Springfield group should also be taken into consideration: It might be. I rather think less emphasis should be placed upon the Springfield group than upon southern Illinois and central Illinois, because southern Illinois is recognized as the base group in Illinois, from which the rates are constructed; and then without any regard to spread in distance or anything else, Springfield rides right
162 along on 30 cents per ton less. I said in my opinion the proposed rates could be justified from all points in the Brazil-Clinton, and Linton-Sullivan groups, as well as from points on the Milwaukee Railroad. Therefore, I think I would advocate the extension of the proposed rates to those points. I think that perhaps some change should be made in the differential between Brazil-Clinton and Linton-Sullivan groups. On direct examination, I did not advocate the extension of the proposed rates to the additional points in the two Indiana groups. I said the proposed rates could be justified from the Brazil-Clinton and the Linton-Sullivan groups. Those are the rates I am talking about. Aside from the change in that differential, I think that the existing differentials between the various Indiana groups to Rockford and Freeport should be maintained. In answer to your question as to whether the rates from the other Indiana groups to Rockford and Freeport should also be reduced: It should be borne in mind that you cannot determine the relationship of rates between competing groups based on distance to one or two single destinations. The rates from Indiana to a large sweep of territory are 30 cents, 20 cents, 13 cents, and 10 cents per ton less than southern Illinois.

Now, in order to get a true picture of that, you have to take in the whole sweep of territory rather than to pick out one point like Rockford, or Beloit, or Freeport. That question is now before the Commission, so far as Wisconsin, Iowa, and Minnesota territory is concerned, and eventually will be determined, to the satisfaction or dissatisfaction of someone. All cases end that way, someone is always disappointed.

Referring to my exhibits 16 and 17: In figuring my direct single-line routes from the Brazil-Clinton district and the Sullivan-Linton district, and from central Illinois, I have used the
163 Illinois Central from central Illinois, and arrived at a mileage of 235 miles. In no. 17, in figuring, making the same comparison from southern Illinois, I used the Illinois Central via Mendota, and the Milwaukee, and arrived at 327 miles. Asking if I used

the same method in figuring the mileage from central Illinois, I would have arrived at a very much lower figure than 235, in other words, 198 miles: The exhibits very plainly speak for themselves, as to what the distances would be over the direct line or over the shortest route.

"Q. Will you please answer the question, Mr. Waffle. Had you used exactly the same method—the same mileage, Mendota—the Illinois Central, Mendota, and the Milwaukee Railroad from central Illinois, you would have arrived at 198 miles instead of 235 miles, would you not?

"A. I did not intend to arrive at that, Mr. Cardy.

"Q. All right.

"A. (Continuing.) In exhibit no. 16. The exhibit is designed to show the distance over the line of the Milwaukee Railroad direct, that publishes the suspended rates, compared with the distance over the direct line from central Illinois to Rockford and Freeport. I am there comparing like things, a single-line haul entirely over the Milwaukee Railroad with a single-line haul from the central Illinois field.

"Q. I know; but in your exhibit no. 17 you are comparing single line with joint line.

"A. There I am comparing the short rate-making line distance.

"Q. And in your exhibit no. 16 you are comparing single line with single line.

"A. Yes, sir.

164 "Q. All right. Now, had you compared single line with joint line like you do in exhibit 17, you would have had a different showing, would you not?

"A. Well, you can get most any kind of showing——

"A. All right.

"A. (continuing). If you will just pick out something that suits your purpose."

In my exhibits, in comparing the level of rates, regardless of distance or regardless of from what point of origin the rates may apply, I have tested their relativity largely by a constant percentage of the Holmes & Hallowell scale and a constant percentage of the so-called Indiana scale. Personally, I do not think that the percentage of the scale is an accurate test, but inasmuch as it has been adopted by the Commission—it was in 23130—as the yardstick for measuring the Illinois-Indiana rates, I thought it was about time that we used it in this case. As to what other method I would use to test the level of rates in this territory: You can test them on ton-mile earnings, and on car-mile earnings. Had I applied that method of testing the relative level of the Illinois and the Indiana scales and applied that clear down to Evansville, through the Indiana groups, I would probably have had a very much higher level of rates from the southern Indiana groups. And you take the same percentage the Indiana rates are of the Holmes & Hallowell scale, and apply that

from southern Illinois, and you measurably increase the southern Illinois rate, and you measurably increase the western Kentucky rate, and you measurably increase the central Illinois rate from Fulton-Peoria, and from Wilmington direct. That is obvious.

It is not my position that the shortest tariff route should be the rate-making route. I stand on the proposition that the average distance from the entire group—that is, the average of the short tariff routes—should measure the average distance for all of the mines that take a common rate. You might eliminate a long, circuitous route in some cases, out of the group; that was done in reference to the rates from southern Illinois to Chicago. I think the logical way to do it is to take the short tariff route distance from the mines on each road, and compare those to get the shortest tariff workable route, and the way the Commission has done it from time immemorial, up until we reached this 13130 decision.

Turning to exhibit 14: In columns 5 and 6, to Rockford, for example, I have used the short tariff route of the Milwaukee Railroad from the Brazil-Clinton and the Linton-Sullivan district, and from central Illinois, as is shown in column 7 I have used the short tariff routes of all of the roads.

There I have not compared like with like to this extent: The distances shown in columns 5 and 6 apply over the route via which the suspended rates apply. Now, then, from central Illinois you have a common rate of $1.70, and it applies for the average distance, shown in column 7. I might say I have tried to put this picture up in as many ways as I possibly could. I have not confined my showing to that one exhibit. Later I have an exhibit which shows the average from all mines in the Brazil-Clinton and Linton-Sullivan groups. If I had used the shortest tariff route from central Illinois as I have done from Brazil-Clinton and Linton-Sullivan, instead of a mileage of 245 miles to Rockford, as I show in column 7, I would show 199 miles, which would be the distance from a handful of mines on the Illinois Central operating to Mendota, and thence using the rails of the railroad that publishes the suspended rates.

"Q. All right. Now, then, if you had used 199 miles in column 7 to Rockford, you would have obtained in column 10 a percentage from central Illinois of 94.4 instead of 85, would you not?

"A. It would be higher than what I have shown. I do not know what it is; I will take your word for it.

"Q. And in column 13 you would have gotten a percentage of 77.6, instead of 67, would you not?

"A. I do not know what it is; but, as I say, I will take your word for it.

"Q. And so in all of the columns—it would make in columns 14 and 15, to Rockford, a rate of $1.88 from Brazil-Clinton instead of $1.69, as you have shown, and $2.03 from Linton-Sullivan, instead of $1.76; is that not correct?

"A. Well, I have not computed it.

"Q. And if you had carried that all the way through, you would have gotten an average of columns 14 and 16, in column 18, of $1.90 instead of $1.68, as you show it, and $2.70 instead of $1.80, as you have shown in column 19; is that correct?

"A. I would not accept—no; I will not say that is correct. I would want to figure it myself before I would say that."

I absolutely did compare like with like, because the rate of $1.70 under suspension applies only over the route of the Milwaukee. It is my position that it should apply from all of the mines; I hope eventually it will. As to whether, if I had based my exhibit on such a basis as that, I would have obtained altogether different percentages and results than I did obtain: In that case, perhaps the comparison ought to be on the average from all of the mines in the Brazil-Clinton and Linton-Sullivan districts, with the average from all of the mines in central Illinois; but I do not think this case should swing entirely on Springfield.

"Q. Well, if you had done the same on exhibit 13, covering southern Illinois, you would have had the same result; would you not?

"A. I have covered it in there somewhere. You can find it in the exhibit there—exhibit 18." (Tes. 92–104.)

167 The only rates involved in this proceeding are the rates published by the Milwaukee from its mines to these destinations. In exhibits 7 to 16, inclusive, I have dealt with that situation and purport to deal only with these rates. In some of my later exhibits I deal with the entire situation. Up to that point, I deal only with the rates that are involved here.

When I spoke of the line of the Illinois Central from central Illinois to Mendota, thence to Rockford via the Milwaukee, I did not mean that the Illinois Central uses the rails of the Milwaukee from Mendota in a physical way; I mean the route. I do not want the record to show that the Illinois Central operates over that line from Mendota. And I want to say that the Central Illinois rate of $1.70 applies via the Illinois Central to Mendota, and thence over the line of the Milwaukee. But I doubt very much whether the Milwaukee hauls any of that coal. They would take it over their own line to Freeport, then 28 miles east on the main line to Rockford.

Asking whether, when I said that in 23130 was one instance where the Commission prescribed rates over the short tariff route and that I do not favor that plan, in what respect they prescribed rates over the short tariff route in 23130: It was not only up to 130 miles. I think if you would examine the report very closely, you will find, for example, where you actually fixed rates to Rock Island and Moline, where the short rate-making line distance was used. As I recall it, we made a very careful analysis of it afterwards to find out if we could what mileages were used. There was a maze of mileages in the report; and I think you and I both agreed one time in a conversation in Washington, that there were a lot of mileages there. The Interstate Commerce Commission did not fix any rate

to Rockford or Freeport. What you did, though, was to com-
168 pare the relativity of Indiana and southern Illinois rates, using one method for Illinois, and then an entirely different method for Indiana.

"Q. Well, I am just trying to get at the point, as to where you are going to get if you take an average distance for the short tariff route from these mines, not over 130 miles. If you undertook to give an alternative, as the Commission did in that case, by applying the group rate, the average distance, or applying the point to point rate, why, then, all the longer distance points would have to go out of business.

"A. I agree that under 130 miles, it is a complicated situation to determine differentials, or what method to use in figuring mileages.

"Q. Well then, your remark that you are not in favor of fixing average distances from these groups as the method of making rates, did that apply to all distances?

"A. Oh, I presume they were talking about the long haul distances——

"Q. Long haul distances?

"A. Yes.

"Q. All right. The Commission did not say anything in 23130 about the fact that rates to the Tri-Cities were fixed on the short tariff route, did it?

"A. You did not say it, but if you figure it out, you will find that that is the way it was done.

"Exam. TREZISE. All right.

"A. (Continuing.) Maybe I am wrong, but I do not think I am."

When I used the phrase "short tariff routes" and "average distance via short tariff routes", I meant short tariff routes of every carrier serving the mines in a given group. That is, for example, the
169 Illinois Central in this connection as the shortest line from Central or Southern Illinois to Rockford. Now I say rates should not be made on that one railroad line's distance. It should absolutely be the average of the entire group of all of the railroads serving that group, because we have a situation in Indiana; in the Princeton-Ayrshire group we have one line, the Baltimore & Ohio Railroad, which is the shortest out of the group. Now if you took the distance from that one mine to fix the rates from the Princeton-Ayrshire group, you would be using a mileage that was not representative of the entire group. On that same theory, it would not be necessarily wrong in principle to predicate the rates from the Indiana mines to Rockford and Freeport, based only on the distance via the Milwaukee Railroad, from mines on the Milwaukee. I am willing to take a chance on the average of the group.

As to why I suggested an increase in the differential as between Brazil-Clinton and Sullivan-Linton: Well, the standard differential to Chicago, and practically all of the territory is 10 cents per ton

between Brazil-Clinton and Linton-Sullivan. I think that is a reasonable differential. It was found reasonable in the Monon Coal Company case. It just happens that way at Rockford, because as stated by Mr. Averitt, there was an agreement among the Illinois and Indiana Railroads some years ago that the Springfield rate would be held as the minimum from Brazil-Clinton to Joliet, Aurora, and Rockford. I thought I made it clear, in winding up, that the rate from Brazil-Clinton should be $1.70, and from Linton-Sullivan, $1.80. Maybe Mr. Averitt does not agree with me on that, but if he does not, it is an honest difference of opinion. The loss of the movement of coal from the Brazil-Clinton district, which is the shorter haul point, had nothing to do with my arrival at that conclusion.

170 Answering what effect the establishment of the rates proposed would have on the rates from Indiana territory to other points in Illinois: I do not think it would result in any reduction in the rates from Illinois into Indiana. As to the other destinations in Illinois than these northern Illinois points, in territories to which the 23922 scale does not apply, and asking if the change would have any effect, in my opinion, on that territory: Well, the only effect it might have would be to reduce the rates to the intermediate points. I think I have clearly shown that our rates to DeKalb and our rates to Elgin are entirely out of line. I think even the present rates of the Milwaukee Railroad are far out of line with the rates from southern Illinois to those points. I think the unfortunate thing in 23130 was that you had three destinations in there, instead of taking in the whole sweep of northern Illinois.

Now, where you do that, you get an entirely different relative mileage picture, Illinois versus Indiana, than you get by tying it up to one or two points. I pointed out in 23130 that our mileages were inflated to Dixon because our good friend the Illinois Central would not open up a route to Dixon on Indiana coal—and that sort of thing. There are a good many factors that enter into the situation. It is just unfortunate that the investigation did not cover a larger sweep of territory in northern Illinois. I will say this now, however, that it will not be very long before we will have that question before the Commission. We want to clear it up, to get it cleared up. We are going to ask our railroad friends to put our rates into northern Illinois, where they are out of line, on the proper basis. This basis that is proposed is not a low basis compared with ——. Relatively it is not a low basis. Mr. Averitt said they were all low. He is chronically a high-rate man, anyway. We are inter-

171 ested in a proper relationship with the rates from southern Illinois; that is our competition. If a rate of $1.90 is a proper rate to DeKalb, certainly a rate of $1.87 is not a proper rate from Brazil-Clinton. What I meant was that the rates from Indiana should be reduced; that is what I refer to as a proper basis; if the

whole level of rates is wrong, that is a matter that ought to be straightened out in some other sort of a proceeding.

As to what other factor, outside of the mere difference in distance I have taken into consideration in justifying the reasonableness of the proposed rates, reasonableness per se: I am not trying to justify that here. All other things being equal, I think mileage ought to be an important factor.

"Q. (By Mr. WILDMAN.) Mr. Waffle, would you object to a restoration of the relationship, Brazil-Clinton and Linton-Sullivan, on the one hand, and southern Illinois, on the other hand, as it existed prior to the time that relationship was disrupted under Ex parte 74?

"A. No, sir; I would want it restored to the basis prior to the reductions made—required by the Illinois Commerce Commission.

"Q. It makes a difference where you start out restoring the basis, does it not?

"A. I do not know what you are talking about. You have got some figure in your head that I have not got, and I am not going to answer that kind of a question."

I am not basing my case entirely upon southern Illinois. I think, if you are going to do a good job, you ought to go down and take in Belleville, and DuQuoin, and Centralia, and all the other Illinois groups—they are all related; they are all in one pot.

172 As long as that is going to be used as the yardstick for measuring relativity of rates, I believe the same percentage of the Holmes & Hallowell scale should apply from Brazil-Clinton as applies from southern Illinois. As to whether there should be no allowance made for the difference in distance, but one percentage should maintain, regardless of the distance: Well, distance is not the controlling factor. You have got to remember that in making rates on a natural resource, that must be produced where God Almighty laid it down. You cannot observe mileage. There are competitive conditions that must be taken into consideration in making the rates on coal. There is absolutely no consistency in the coal differentials. Go down through the volumes of the Interstate Commerce Commission, and you can find anything you want; you can get a 15-cent differential for 215 miles. There is no consistency in them. I do not believe anybody knows the real science of figuring out what a differential should be. I have never found it, at least.

"Q. Then, in spite of all of these distances, and all of these percentages that you have in your exhibits, that you have just introduced, we really should forget about those——

"A. No; you should not forget about them.

"Q. And use some other method?

"A. I have submitted the record here for the benefit of the Commission" (tes. 104–114).

This closed the case on behalf of the respondent (tes. 115).

173 W. M. SEABERG, coal salesman for the Old Ben Coal Corporation, with residence at Rockford, Ill., testified:

The Old Ben Coal Corporation operates mines in Franklin County, in southern Illinois. The destination territory under my jurisdiction includes Rockford, Freeport, and surrounding territory, and southern Wisconsin. I have been selling Old Ben Coal in Rockford almost five years, and feel I am fairly familiar with the competitive situation there, that is as between the various coals. Practically every kind of coals are sold in Rockford and Freeport. There is southern Illinois coal sold in Rockford and Freeport; there is central Illinois coal sold in Rockford and Freeport; there is some coal from the smaller producing districts in Illinois, such as DuQuoin, and northern Illinois; there is coal from the Brazil-Clinton and Linton-Sullivan districts in Indiana; from Princeton, Indiana; from the Boonville district in Indiana, and there is coal sold there from western Kentucky. There is eastern coal sold there. There is also the competition between coal and coke at those points. During the past four years, the sale of coal from southern Illinois to Rockford has materially decreased. I can give some figures prepared by the Illinois Coal Bureau, indicating the movement of coal in cars from the southern Illinois district to DeKalb, Freeport, and Rockford; DeKalb, 1929, 275 cars; 1930, 168 cars; 1931, 132 cars; 1932, 111 cars. Freeport, Illinois; 1929, 886 cars; 1930, 588 cars; 1931, 558 cars; and in 1932, 396 cars. Rockville, Illinois, 1929, 4,549 cars; 1930, 2,575 cars; 1931, 2,179 cars, and 1932, 834 cars. These figures represent the total number of cars of all sizes of coal shipped from 95 percent—from mines representing about 95 percent of the production in the southern Illinois quality field. Coal from southern
174 Illinois competes with Indiana coal, both northern Indiana coal and southern Indiana coal, for all purposes in Rockford and Freeport. That is for steam purposes as well as for domestic purposes. To state from my experience in selling coal from Indiana, the extent to which Indiana coal has increased or decreased in Rockford and Freeport, in the last four years: Of course, in the last three or four years there has been a decrease in all kinds of coal moving into both Rockford and Freeport. But the decrease in southern Illinois coal has been a great deal larger than the decrease in the Indiana coals. There has been a substantial decrease in the tonnage from southern Illinois; even since the rate was reduced 17 cents per ton, although no corresponding reduction was made from the Indiana mines.

One big piece of business in Rockford is the power plant at that point. Indiana has always shipped a substantial amount of coal to that power plant. I have it from pretty good authority that 70,000 tons were shipped to that power plant from Indiana in 1929. The authority is the Rockford Manufacturers and Shippers Association. The utility plant at Rockford does not take as much coal at the present time as it did in 1929; they are not producing the power there any more; they are getting it over the high line from Waukegan. Leaving out of consideration the tonnage moving from

Indiana to the power company, I would say that the shipments of coal from Indiana to Rockford have increased during the past four years. Indiana has taken business away from southern Illinois in the last two years, since the rate from southern Illinois was reduced by 17 cents per ton. To give reference to the companies that have switched to Indiana coal say since August 20th, 1930, when the rate was reduced by 17 cents: The Stover Manufacturing
175 Company, of Freeport. To take each individual company I will refer to and say whether they have switched to northern Indiana or southern Indiana coal: That is northern Indiana coal. The tonnage that is involved there depends upon conditions. Under normal conditions, assuming the present conditions are not normal, from 3,000 to 5,000 tons per annum. The Rockford Hosiery Company, Rockford; I am not certain whether that is northern or southern Indiana coal. There are 8,000 to 10,000 tons involved there. I think I can recollect another particular industry: the Burson Knitting Company at Rockford, 4,000 tons to 5,000 tons, annually. I believe they burn both northern and southern Indiana coal. With respect to the situation at the retail yards: There is more Indiana coal and less southern Illinois coal being purchased by the retailers. Based upon my familiarity with the competitive situation at Rockford, I would say, in the event the 17-cent reduction is permitted to go into effect from mines in the Brazil-Clinton and Linton-Sullivan districts, it will take tonnage away from southern Illinois and put it into Indiana. I think it would be a substantial amount. And in the event that the 17-cent reduction were spread to southern Indiana groups, it would again displace still additional tonnage now coming from southern Illinois, considerable. As to whether or not coal originating on the Milwaukee road in Indiana sells at a lower price than coal originating at mines on other railroads located in northern Indiana fields: Very seldom we run into any other coal moving out of northern Indiana, that does not come over the Milwaukee railroad. I cannot recall any specific instance where it was off of the Milwaukee railroad.

"Q. Now, I did not want to interrupt you in connection with these plants that have switched to Indiana coal. Have you finished, or are there any other plants that you know of, that have switched from Illinois coal, southern Illinois coal to Indiana coal, in
176 the last two or three years? (tes. 114–125).

"A. Most of these plants that I have in mind have switched to southern Indiana coal.

"Q. The rest have switched to southern Indiana coal?

"A. Yes, sir."

In addition to those that I have given, there have been several other plants that I know definitely have gone to southern Indiana coal since the rates from southern Illinois were reduced 17 cents per ton; that is, since August 1930.

I wish to add to my testimony only the general picture, that Indiana coal, as a rule, carrying a cheaper freight rate, that has been quite an inducement to dealers getting away from the steam trade, and getting right to the domestic dealer trade, because even a slight differential of 17 cents means quite a lot of difference to a retailer. And if that reduction at Rockford, for instance, is put into effect, it is going to swing a lot of tonnage that is now enjoyed by southern Illinois over to the northern Indiana group. I know of plants that have switched from Indiana coal over to southern Illinois coal since the southern Illinois rate was reduced 17 cents; one specific plant at Rockford, the Rockford Fibre Container Company, runs 18,000 to 20,000 tons. They are not consuming quite that much coal now.

CROSS-EXAMINATION

The Rockford Fibre Container Company is about the only plant in that list I have definite knowledge of that switched from Indiana coal to southern Illinois coal.

I referred to the southern Illinois quality field. As to whether that is something other and different than the southern Illinois
177 field: The salesmen class Franklin County, Saline County, and Williamson County, as the quality group in southern Illinois. That is commonly called the quality circle coal and sells at a little higher price at the mines than other coal. That price has been pretty well maintained during this period of stress, although considerably cheaper than it was four years ago. The present circular price on quality circle coal, on lump coal, is $2.25 per ton, f. o. b. mine. It is pretty hard to say that the average price of northern Indiana lump coal is about $1.50 per ton, because we run into all kinds of prices on northern Indiana coal; I do not think that I could arrive at an average. I do not think that taking away any business from the retail yards might be on just a question of mine price. The Indiana price competition that I have run up against on lump coal, for delivery in this territory is anywhere from $1.40 up, or as much as they can get. In competition with the southern Illinois quality circle coal it might be $2.25. It has been as high as $2.40 while our price was $2.25.

I gave a statement of deliveries in Rockford, Freeport, and DeKalb, for a period of years. During 1932 the southern Illinois mines were all down with a strike for five months and that had some effect upon the quantity of coal that was delivered in this territory.

"Q. Do you know the total consumption of coal in Rockford, Freeport, and DeKalb in 1929 as compared to 1931, for example—all coals?

"Mr. WILDMAN. Do you include eastern coal in your question?

"Mr. WILKINSON. Yes, sir; eastern coal, all kinds of coal.

"A. No; not including eastern coal.

"Q. (By Mr. WILKINSON). Well, do you know for Illinois, Indiana, and western Kentucky?

"A. Yes."

178 The total coal to Rockford, alone, in 1929, was 454,448 tons; 1930, 371,985 tons; 1931, 276,957 tons; and 1932, 268,855 tons. That is the number of bituminous coal from mines in Illinois, Indiana, and western Kentucky, received at Rockford. I got those figures from the Rockford Manufacturers and Shippers Association. I do not know what northern Indiana coal company is shipping coal to the Stover Manufacturing Company at Freeport. As to how I know that it comes from northern Indiana: Because I have been told by the salesman who originally had the business on southern Illinois coal that it was Brazil coal. About the Rockford Midland Hosiery Company: I said I did not know where that coal comes from. I got my information that they had switched from southern Illinois coal to Indiana coal from the purchasing agent of the Rockford Hosiery Company. I got my information regarding the coal at the Burson Knitting Company from the same source; that is, the purchasing agent. I do not know how much of that coal comes from northern Indiana and how much from southern Indiana; I do not know the proportions.

"Q. You were told that it came from both?

"A. It comes from Indiana—yes, both fields.

"Q. Well, do you mean both fields, or——

"A. Either one.

"Q. There are four fields in Indiana you understand. Does it come from all four of those fields?

"A. No; not from all four of them. You see we do not classify the coals so much by fields in our work, as we do from districts. We call—well, coal from—as we have got it from the Princeton district, is Oakland City to us, or Pike County."

And the Brazil coal, we just classify as Brazil, and you

179 call it Brazil-Clinton, or Brazil-Linton, while we just call it Brazil. My understanding is that some is of the so-called Brazil coal, and some is Oakland City coal. I said that there is more northern Indiana coal being sold to retailers at these three cities since the reduction in the Illinois rates than before. I got my information on that from local retail dealers handling the coal. One of the retail dealers that told me that, was the H. A. Hilmer Company, of Freeport, Ill. As to where he is getting his Indiana coal from: He called it Brazil lump coal. I will give you an instance in DeKalb, Illinois, the DeKalb Ice Company. They are burning Brazil block or lump. The H. A. Hilmer Company, of Freeport are also buying washed stoker coal from northern Indiana—well, they call it central Illinois—or Central Indiana Coal Company, I believe. The Rockford Lumber & Fuel Company, at Rockford are also buying screenings, stoker coal. They have just switched over to handling that coal since 1930; they never handled it before.

The use of Springfield coal has increased from about 9,000 tons to about 22,000 tons at Rockford during the last few years. The 9,000 tons was in 1929. I can explain that simply by the fact that the last few years we have had a very difficult poor relief problem in Rockford, and the central Illinois coal was one of the cheapest coals they could get in there, to serve their poor relief (tes. 125–135). Practically all of their tonnage, domestic tonnage, in the last year or two of central Illinois coal has gone for poor relief, or coal to meet the needs of people who could not pay any more than that for it.

"Q. (By Mr. WILKINSON:) Your figures on the shipments to Rockford indicate that the Indiana shipments have decreased materially, 1929 as compared to 1932, with the exception of shipments from Princeton, which increased in 1932, while southern Illinois was shut down by a strike.

"A. No; that is not entirely correct. Brazil-Clinton in-
180 creased from 1929 to 1932."

The shipments from Brazil-Clinton in 1929 were 19,290 tons to Rockford; on the Linton-Sullivan 68,824 tons. My figures on the Linton-Sullivan for 1932 are 16,994; for Brazil-Linton, 27,276.

"Q. In 1929 was Brazil-Linton shipping coal to the power plant at Rockford?

"A. Not from those figures; no, sir."

My figures from Princeton for 1931 to Rockford were 66,733 tons and for 1932, 43,794 tons. Boonville, 1931, 35,827; and 1932, 1,888 tons. I believe the Indiana mines were operating all through 1932—the Princeton mines, although full time. They had no strike. I understand they were operating down there in the Princeton district in 1932, while the mines in southern Illinois were shut down.

"Mr. LEAHY. Mr. Seaberg, your figures are wrong for northern Indiana. Northern Indiana was operating part time in 1932, or was closed down by a strike—the mines up there.

"The WITNESS. I believe the majority of the operations were more or less curtailed, if not out on actual strike. The shaft mines in the Brazil-Clinton district and the Linton-Sullivan district were down practically during the same time the Illinois mines were, except those I imagine that worked on a cooperative basis.

"Mr. WILDMAN. That is what he said, that their production was curtailed in the northern Indiana district.

"Mr. CARDY. They were down."

I stated that the Rockford Fibre Container Company had switched from Indiana coal to southern Illinois coal subsequent to 1930. That company was for a great many years on southern Illinois coal, and it was on Indiana coal for just a year or two. It was put on Indiana coal for a year or two, because of the cheaper delivered price, taking the freight rate into consideration of course.
181 I believe the attitude of the Illinois railroads in connection with the proposed reduction from southern Illinois had something to do with that. I know that the relations between that con-

cern and the Illinois Central Railroad Company are very close. That is about all I do know about the railroad's connections. In other words, I ship them all of their coal over the Illinois Central Railroad. There may be some Indiana coal bought for charity purposes in Rockford; it is pretty hard to keep track of that. The real competition that we have to meet at Rockford is Indiana coal, and we only run into Springfield coal during a relief period, when they give it away. In answer to your question from what district is the principal competition with Indiana coal: It varies, in certain districts, but both the Boonville-Princeton and the northern district are our competition.

Mr. H. A. ROZENE, assistant to the traffic manager of the Illinois Coal Traffic Bureau, located at Chicago, testified:

I have been connected with the Illinois Coal Traffic Bureau for the past ten years, and for nine years previous to that, I was with the Illinois Central Railroad, in the traffic and operating departments. I am familiar in a general way with the coal rates structure throughout the country, and I am familiar with the issues involved in this case. The Illinois Coal Traffic Bureau is a voluntary association of coal producers having mines in the State of Illinois, most of the mines being located in the Centralia, DuQuoin, and southern Illinois groups.

The Illinois production from mines of its members last year was approximately 15,000.000 tons. Of course, in normal years, the production has been much greater.

I have prepared a series of exhibits which I desire to introduce in evidence in this case.

182 My exhibit no. 27 is a statement showing the distances to Rockford, Illinois, from southern Illinois, Brazil-Clinton. Linton-Sullivan, Princeton, and Boonville, Indiana, groups. Note that the distances have been computed by two methods. The first column shows the distance from all billing points on all lines via the short tariff routes.

As an illustration, take Benton, Illinois. Benton is served by the Chicago & Eastern Illinois, the Illinois Central, and the Missouri Pacific. Therefore the distance from Benton has been computed three times. This same method has been used from all other origin points served by more than one railroad. The second column of figures shown on this statement indicate the distance to Rockford from each billing point used but once. For instance, the distance from Benton has been here considered via the Illinois Central, Mendota, and the St. Paul Railroad only.

Page C is a recapitulation of all of the mileages shown on pages A, B, and C.

Via the short rate-making route, the distance from southern Illinois to Rockford is 328.2 miles. The average distance, that is, figuring the average of all short lines from the district, is 365 miles. The average, using each billing point but once, is 349 miles.

Page D is a similar statement showing the distances from the Clinton-Indiana district to Rockford, Illinois. Page E is a recapitulation showing the short tariff route to be 235 miles; the average of the short tariff routes to be 274.9 miles; and the average of the short tariff routes, using each billing point but once, is 272.7 miles

In answer to your question, what is what I term the short rate-making line from the Brazil-Clinton group to Rockford: (Tes.
183 135–144) via the short rate-making line, the distance is 229.8 miles, applying via the Milwaukee Railroad direct. The exhibit shows the distance from mines on the Milwaukee Railroad in the Brazil-Clinton group are somewhat less than the average distance from all mines in the Brazil-Clinton group.

Page F of this exhibit shows the distance from the Linton-Sullivan, Indiana district to Rockford. Page H is a recapitulation of those distances; the short tariff route from the Linton-Sullivan district to Rockford being 271.1 miles, the average of the short tariff routes being 294.5 miles, and the average, using each billing point but once, being 292.6 miles.

Pages I and J show the distance to Rockford from the Princeton, Indiana, district.

Page J shows the short tariff route distance to be 333.6 miles; the average of the short tariff routes is 368.4 miles; and the average using each billing point but once, is 368.1 miles.

Page K shows the distance from the Boonville District to Rockford. There is only one group, on the one railroad serving this group, and the average is 416.1 miles.

As to how I determine the billing points that I have used in this next exhibit, and in subsequent exhibits: I took the origin points shown in the tariffs, wherever there was a distance published from such origin points in the carriers' distance tables. I did not attempt to determine which might be termed live billing points, and which might be termed dead billing points, I had no way of getting at the actual figures on such a proposition.

My exhibit no. 28 is a similar exhibit, being a statement showing the distances from southern Illinois to Freeport, Illinois. Page C of the exhibit shows the average of the short tariff route distance to be 337.8 miles; the average of the short tariff routes to be 384 miles; and the average using each billing point but once, 367.8 miles.

184 Pages D and E show the distance from Clinton, Indiana, to Freeport. The short tariff route distance is 267.4 miles; the average using all billing points on all lines, is 309.3 miles; and the average using each billing point but once, is 307.3 miles.

Pages F and G show the distance to Freeport from the Linton-Sullivan, Indiana, district. The short tariff route distance is 298.5 miles; as shown on page H, the average of the short tariff routes is 329.6 miles; and the average using each billing point but once, is 328 miles.

Pages I and J show the distance from the Princeton, Indiana, district, to Freeport. The short tariff route distance is 356 miles. The average of the short tariff routes is 380.3 miles, and the average using each billing point but once, is 378.1 miles.

Page K shows the distance from Boonville, Indiana, to Freeport. The average distance from the mines in this district is 401.7 miles.

My exhibit no. 29 is a similar statement, showing the distances from southern Illinois and Indiana groups to DeKalb, Illinois.

Page C of the exhibit shows the short tariff distance from Southern Illinois, to be 310.8 miles. The average of the short distance tariff routes is 335.9 miles, and the average using each billing point but once, is 326.9 miles.

Page E shows the average short tariff route distance to be 198.2 mines; that is from the Clinton-Indiana district. I mean by that, that is the distance via the short rate making line. The average of the short tariff routes is 241 miles; the average using each billing point but once is 238.7 miles.

Page H shows the distance from the Linton-Sullivan district to DeKalb, Illinois. The short tariff route distance is 234.3 miles; the average of the short tariff routes is 262.2 miles; and the average using each billing point but once is 259.2 miles.

185 Page J shows the distance from the Princeton, Indiana, district to DeKalb. The short tariff route is 296.8 miles. The average of the short tariff routes is 322 miles; and the average of the short tariff routes using each billing point but once, is 321 miles.

Page K is a statement showing the distance from the Boonville, Indiana, district to DeKalb, Illinois. The distance is 359.5 miles.

Exhibit 30 is a recapitulation of the rates and distances as shown on the preceding exhibit. This exhibit also shows the difference in the present rates and distances over or under southern Illinois. The last column of figures on this exhibit shows the difference in distance, by computing the distances using each billing point but once. Note that the distance to Rockford from the Brazil district is 76 miles less than from southern Illinois; the present rate is 13 cents per ton under southern Illinois.

If the proposed rate of $1.70 per net ton is permitted to become effective, the difference in rate would be 30 cents per ton. The distance from the Linton district is 56 miles less than from southern Illinois, and the difference in the present rate is but 8 cents per ton. If the proposed rate is permitted to become effective, the difference would be 25 cents under southern Illinois. The present rate from the Princeton district is 1 cent less than from southern Illinois, although the distance from the Princeton group is 19 miles over southern Illinois. The present differential, Princeton over Brazil, is 12 cents per ton. If the proposed rates were permitted to become effective, and the present differential maintained, the Prince-

ton rate would be $1.82, or 18 cents lower than from southern Illinois, for a difference in distance of 19 miles greater.

The present rate from the Boonville district is 2 cents higher than from southern Illinois, although the difference in distance is 48 miles greater. If the suspended rates were to become
186 effective, and the present differential maintained, the Boonville rate would become 15 cents lower than the rate from southern Illinois. I need not go into detail about Freeport and DeKalb as the exhibit clearly shows that similar differences in the rates and distances prevail as at Rockford. In that exhibit, in the fourth from the last column under "Proposed rate", I show Princeton 18 cents under Rockford, and Boonville 15 cents over. That is not correct. The "over" should be "under." It should be "U" after the 15, and the same thing in the block covering Freeport. In this exhibit I have two columns, the second column headed "Proposed rate" from Princeton, $1.82 and from Boonville $1.85. As to where are these rates proposed, and who has proposed them: If you will read the reference mark at the bottom of the page it will explain that. It says "Reference mark" and "Number sign" there and then "Not actually published." Rates indicated are those that would apply were present differentials over Brazil-Clinton and Linton-Sullivan groups maintained." That is a correct statement. As to whether this $1.70 rate is not proposed from all of the Clinton or all of the Linton group: I naturally would assume, if you are publishing a rate from one mine in a group, it would apply from the entire group. I could not conceive of the idea of the Commission giving one certain mine in a group, a lower rate than the rest of the points in the same particular rate making group. I would just naturally assume that if the rates from Brazil-Clinton come down to 15 cents, or 10 cents, or even a nickel, or whatever the change may be, the rest of the group will come down or go up with them. There might be such an instance where there are many destinations to which the long haul rates in the so-called Indiana groups are not on a parity. I do not know of a specific instance offhand however.

187 "Q. (By Mr. WILDMAN.) Now, Mr. Rozene, before you proceed further, Mr. Waffle introduced exhibits indicating percentage relationships of the present proposed rates from northern Indiana groups to Rockford and Freeport, with the 23922 scale—I think it is called—contrasted with the percentage relationships of rates from Springfield and southern Illinois, to that scale.

"Have you made any computation to indicate the percentages that the present proposed rates bear to that [23922] scale, predicated on the distances set forth in Exhibits which you have already introduced, and based on the average distances from all points in the group using each billing point but once?

"A. Yes, sir, I have. Take for instance our exhibit number 30; the distances to Rockford under the column showing 'Average, each billing point used but once'—the distance here is 349 miles, and the present rate is $2. For the same distance under the scale proposed in 23922, the rate for this similar distance of 349 miles is $2.31, and this $2 rate is 87 percent of the rate proposed in 23922.

"From the Brazil-Clinton district the present rate is—or rather the present distance is 273 miles, and the present rate is $1.87. For the same distance under the scale, the rate would be $2.07, and the $1.87 rate is 90 percent of the rate proposed in the scale prescribed in 23922. The suspended rate of $1.70 would be 82 percent of the rate prescribed in 23922. Incidentally the rate in that scale would be $2.07 for a distance of 273 miles. The distance from the Linton district to Rockford is 293 miles, and the present rate is $1.92. Under the scale, the rate is $2.15, which is 89 percent of the rate as prescribed in 23922. The suspended rate is $1.75, which is 81 percent of the rate prescribed in 23922, the rate in 23922 for this distance being $2.15."

188 That column, shown on exhibit 30, where it says "Average each billing point used but once" is the average of all billing points in the respective groups; that is the average of each origin point as shown in the tariffs. It is the average of the short tariff routes, using each billing point once. That is to say, if Benton, for example, is shown in three different tariffs, in making this computation you have only taken the shortest tariff distance from Benton to Rockford. The distance from southern Illinois to Freeport is 368 miles, and the present rate is $2.00. The rate under the scale would be $2.39. The $2.00 rate is 84 percent of the rate as prescribed in 23922. The distance from Brazil to Freeport is 307 miles; the present rate is $1.87. The rate prescribed under 23922 is $2.23 for the same distance. The $1.87 rate is 84 percent of the rate prescribed in 23922, the same as southern Illinois. As to the percentage, the proposed rate is of the scale: The suspended rate is $1.75, which is 76 percent of the rate as prescribed in 23922. The distance from the Linton district to Freeport is 328 miles. The present rate is $1.92. The rate prescribed in 23922 is $2.31. The present $1.92 rate is 83 percent of the rate as prescribed in 23922. In other words, the present rates from southern Illinois to Rockford and Freeport are substantially the same percentage of the scale, the Indiana-Illinois scale, as are the present rates from the Brazil and Linton districts to Rockford and Freeport. Your percentages to Rockford are as follows: Southern Illinois, 87 percent; Brazil-Clinton, 90 percent; Linton, 89 percent; a difference of 3 percent at one point, from Brazil-Clinton; and 2 percent at Linton-Sullivan. From southern Illinois to Freeport, 84 percent; from Brazil-Clinton, 84 percent; and from Linton, 83 percent.

189 Exhibit 31 is a statement showing the commercial mines in southern Illinois, that produced coal in the year 1931, and

the distances from such mines to Rockford, Illinois. Page B shows the average distance computed in two different methods; one, using all points as shown on the statement; the average distance being 347.6 miles; and using each billing point but once, the distance is 345.3 miles. I have made computations on more or less of a weighted average to determine what the distance would be, but Rockford is the only point I took. It figures 340.67 miles. As to how I arrive at that figure: I took the number of tons shipped, produced from each mine, divided them and multiplied them by the number of mines. I have made computations not shown on the exhibits similar to the computation shown on exhibit 31, to indicate the distance computed in the same manner to Freeport and DeKalb. To Freeport the distance was figured 360.1 miles, using all billing points, and 362.8 miles, using each billing point but once. To DeKalb it was figured as 324.7 miles, using all billing points, and 308.3 miles using each billing point but once. As to whether that is based on exhibit 31, the production shown in exhibit 31: It is on the same basis, but the distances are computed—for instance, like Freeport here, the only difference is the distance. The same tonnages are used; yes, sir. The tonnage does not enter into the figures I just gave. I used the same billing points as shown in exhibit 31. (Tes. 144–159.) These figures were taken from the State mining reports, and that is the way the billing points, as we call it, is shown, in those so-called State mining reports—post office or mine location. Based on my knowledge of the way the traffic is billed from these mines, I can say that in substantially every instance, coal is billed from the point indicated on the exhibit. The Bell & Zoller coal is
190 billed from Ziegler. I do not think there are very many instances where the coal is billed from any other point, other than as shown on the exhibit.

Exhibit no. 32 is a statement showing the commercial mines in southern Illinois, the southern Illinois field, producing over 5,000 tons during the calendar year 1932. The total number of tons, as is shown on page B for the year 1932, was 10,262,033 tons, for a total number of mines of 34. The average for the 34 mines was 301,824 tons. Page C shows the tonnages by railroad, tonnages divided by railroad, local or joint mines.

"Q. What does it show with regard to the relative importance of the local mines in contradistinction to the joint mines in southern Illinois?

"A. Well, the joint mines—there are double computations, on the joint mines. This probably takes in—the joint mines of course have a large tonnage.

"Q. The point I was trying to ask you about was, which preponderates, the local mines or the joint mines?

"A. The joint mines."

My exhibit no. 33 is a statement showing the history of the rates and differentials on bituminous coal in carloads to Freeport, Ill.

The first column shows southern Illinois; second, Brazil-Clinton; third, Linton-Sullivan; Princeton, in the fourth column; and Boonville, in the fifth column. Page B is a similar statement showing the history of the rates and differentials to Rockford, Ill. Page C is a list of the tariff authorities.

Referring to that exhibit, immediately prior to the Commission's decision in Ex parte 74, the difference, southern Illinois over Brazil-Clinton—or Brazil-Clinton under southern Illinois was 15 cents.

The difference today is 13 cents. The differential proposed is
191 30 cents. The differential southern Illinois versus Linton immediately prior to Ex parte 74 was 10 cents. The differential today is 8 cents. The proposed differential is 25 cents.

(Protestants' exhibits nos. 27 to 33, both inclusive, received in evidence.)

CROSS-EXAMINATION

I do not know whether or not there are many joint mines in Indiana. The only way I have of securing that information is to take—well, let me illustrate. For instance, Brazil; in computing my mileage I have taken Brazil on the Baltimore & Ohio. Brazil also is shown on the Chicago & Eastern Illinois, and also on the Pennsylvania. And I did the same thing for Illinois. Where I used the same billing point but once from the Brazil-Clinton group, I took each of those three lines serving Brazil at the shortest distance to Rockford—or Freeport. It does not indicate that that covers all of the mines that are in and around Brazil that are served by those various railroads. The same thing is true with respect to my figures for southern Illinois. My column headed in my exhibit, "Using each billing point but once", merely means that I have used the shortest distance from a particular billing point, irrespective of the shipments over that line, and that will also apply to using all billing points on all lines. I do not know whether there is a movement of coal over certain of these roads. For example, if I use the Chicago & Eastern Illinois distance from a southern Illinois point which was also served by the Chicago, Burlington & Quincy Railroad, the distance via the Chicago & Eastern Illinois might be the shortest route, but the bulk of the coal might move via the Chicago, Burlington & Quincy Railroad.

This figure that I have designated and referred to as the short tariff route, for example on page C of my exhibit no. 27,
192 328.2 miles—from southern Illinois to Rockford—those are just the mines on the Illinois Central Railroad.

"Q. And that does not reflect the Missouri Pacific situation at all?

"A. Oh, no, no. It reflects as it says; it is the short tariff route." It is the shortest tariff route, in other words.

"Q. The Illinois Central has the shortest haul from its mines in southern Illinois, of any other carriers serving southern Illinois, has it not, to Rockford?

"A. To Rockford?

"Q. Yes.

"A. Well, no; not the Illinois Central. The Illinois Central in connection with the Milwaukee Railroad.

"Q. Well, the Illinois Central and its connections.

"A. Yes, sir."

As to whether I have got all of the shipping points of the Missouri Pacific Railroad included in this statement of mine on page C of my exhibit no. 27, there is one point that I have found since this statement was prepared that makes no difference in the mileage, and that is East Carterville. Now, there are other points shown in the Missouri Pacific tariffs. I can pick out one, probably—well, I think Jefferies, Ill., is shown in the Missouri Pacific tariff; but I have not used it because I am unable to figure any distance from Jefferies. So in all of these wherever there is a point shown in the tariff, and there is no distance published, I have eliminated it.

In answer to your question whether the Missouri Pacific publishes rates from what are known as their group 10 mines, taking the
193 Southern Illinois rates, there are several groups probably that carry the same basis of rates that would apply from southern Illinois, although they are not southern Illinois points.

"Q. (By Mr. WILDMAN.) You did not include DuQuoin, did you?

"A. No, sir.

"Q. They take the southern Illinois rates.

"A. No, I did not."

I could not tell you offhand whether the Carbon Coal Company shown in my exhibit no. 31 has any mines at Marion, Illinois, on the Illinois Central. My exhibit no. 31, where it shows the average distance via the route, does not show the average distance from the post-office address; it is the average distance from the point shown under column 2. It might be the post-office location, but——. I could not answer the question as to whether the $2 rate applies from the mines of the Carbon Fuel Company via the Illinois Central, to Rockford, Illinois. It applies from Marion. I would assume that if the Carbon Coal Company would be located at, say, for instance, on the old M. & E. Railroad, why, it would move over through——. Some of these mines that I show here might have their address at Chicago, but their location is not there. The column is headed "Post-office location."

The Carbon Fuel Company mine may be located at Herrin, Ill.; I do not know.

The Cosgrove-Meehan Coal Company mine no. 1 is located on the old M. & E. division of the Missouri Pacific Railroad. It is identified in the tariff as Franco 1, two or three miles from Marion. I do not think Cosgrove no. 1 is located on the Chicago, Burlington & Quincy Railroad. The Burlington Railroad does not make Marion—it does not get into Marion. (Tes. 159–169.)

(Witness excused.)

194 L. F. MALUM, appearing for the Springfield Coal Traffic Bureau, Springfield, Ill., testified:

The Springfield Coal Traffic Bureau is an organization comprised of operators owning and operating about 21 coal mines in the northern part of central Illinois; most of them are located in and around the city of Springfield. We appear in this proceeding because we are interested in the importance to us of a proper relationship of rates between our mines, on the one hand, and other groups of mines in Illinois and Indiana on the other hand.

Our members advise me that they find it extremely difficult to market their coal beyond a distance of from 75 to 100 miles from the mine, and that because of the present differential adjustment and relationship of rates, they cannot get beyond this zone. We will endeavor, accordingly, to show that the rates from our mines are now on approximately the same level as or higher than from northern Indiana mines, based on the present rates of 187 and 192 respectively from the Clinton and Linton districts, and measured by means of the Holmes & Hallowell scale level. If there is a reduction in rates from northern Indiana groups, there should be a corresponding reduction from the mines in central Illinois.

My first exhibit no. 34 is a statement showing the average distance from all mines in the Springfield district to Rockford, Ill., via the shortest tariff routes. This computation embraces each point of origin in the Springfield district as many times as that origin point appears in the various tariffs of the carriers. For instance, the short line distance is figured from Springfield, Ill., to Rockford via the Alton, Baltimore & Ohio, Chicago & Illinois Midland, Illinois Central, and Wabash as originating lines. This exhibit shows

195 that the shortest route from the Springfield district to Rockford is via the Illinois Central-Mendota-Chicago, Milwaukee, St. Paul & Pacific, the distance being 198.6 miles, rate 170 which is 77.6 per cent of the Holmes & Hallowell scale. The average distance via all short tariff routes, it will be noted, is 250.4 miles, or 66.1 per cent of the Holmes & Hallowell scale. I mean that distance is the average distance from all mines on the Illinois Central. The average distance via all short tariff routes, it will be noted, is 250.4 miles or 66.1 per cent of the Holmes & Hallowell scale.

Exhibit no. 35 shows the average distance from all mines in the Springfield district to Freeport, Illinois, via the shortest tariff routes, and is computed in exactly the same manner as exhibit 34 covering Rockford, Illinois.

It will be noted the average distance via the short tariff route is 208.5 miles, rate $1.70, or 75.1 percent of Holmes & Hallowell, via Illinois Central direct. The average distance from all points of origin in the Springfield district via the short tariff routes, is 273.2 miles, or 62.6 percent of the Holmes & Hallowell scale.

Exhibit no. 36 is a statement showing the distance via short tariff routes, from each mine in the Springfield group to Rockford, Illinois, using each point of origin but once.

The points of origin shown on this exhibit are points at which coal was produced in 1931, according to reports of the Department of Mines and Minerals of the State of Illinois; also mines which have been temporarily shut down, but have not been definitely closed. Attention is directed to the fact that the distance from Springfield, Illinois, at which point is located the larger number of the mines of the members of this bureau, to Rockford via Illinois Central-
196 Mendota-Chicago, Milwaukee, St. Paul & Pacific, which is the shortest tariff route, is 197.1 miles, or 77.5 per cent of the Holmes & Hallowell scale, and 8.6 mills per ton-mile.

"Q. (By Mr. CARDY.) Mr. Malum, is that right? You said 198.1 in one of these other exhibits.

"A. Well, this is the distance—the distance on exhibit number 36 is the distance from the switching district of Springfield, Illinois. The average distance from all of the mines, computed in the manner described, is 240.3 miles, or 68.5 per cent of the Holmes & Hallowell scale, producing 7 mills per ton mile."

Exhibit no. 37 shows the distance via shortest tariff routes from mines in the Springfield district to Freeport, Illinois, using each point of origin but once and is exactly the same information as portrayed in the previous exhibit no. 36, covering Rockford, Illinois. The distance from Springfield, Illinois, via the shortest tariff route is 206.5 miles, rate $1.70, or 75.2 per cent of the Holmes & Hallowell scale, which produces 8.2 mills per ton mile. The average distance from all mines is 251.3 miles, or 65.1 per cent, or 6.7 mills per ton mile.

As to how the mileages that are shown in my exhibits compare with the mileages submitted by Mr. Wildman and Mr. Waffle: There is a slight difference; there is no material difference. In one or two cases it throws it into the next block, the next ten-mile block. My mileages are slightly greater than shown by Mr. Wildman.

Exhibit no. 38 shows the distance via all tariff routes from all mines in the Brazil-Clinton and Linton-Sullivan groups, the percentage of the Holmes & Hallowell scale of the present and proposed rates, from those two groups as compared with the Springfield group. The mileages shown on this exhibit from Indiana were taken from Witness Wildman's exhibits submitted yesterday.
197 From the Brazil-Clinton and Linton-Sullivan groups in Indiana to Rockford, via all routes, all tariff routes, the distance is 274.9 miles and 294.5 miles, respectively; and to Freeport 309.3 miles and 329.6 miles, respectively.

My exhibit no. 38 makes a comparison, using these distances with the distances from the Springfield group, computed in exactly the same manner. There should be one correction in the top line of exhibit 38. The word "shortest" should be inserted between the word "all" and the word "tariff."

To Rockford, Ill., the present rate is $1.87 from the Brazil-Clinton group, for 274.9 miles, which is 68.6 per cent of the Holmes & Hallo-

well scale; and from the Linton-Sullivan group, the present rate is $1.92, for 294.5 miles, which is 67.1 per cent of the Holmes & Hallowell scale, as compared with the distance from the Springfield group of 250.4 miles, with a rate of $1.70 per ton, which is 66.1 per cent of the Holmes & Hallowell scale.

The rate under suspension from the Brazil-Clinton group to Rockford is $1.70, which for the distance indicated is 62.5 per cent of the Holmes & Hallowell scale; and from the Linton-Sullivan group, the proposed rate is $1.75, which is 61.2 percent of the Holmes & Hallowell scale; as compared with the rate from Springfield to Rockford of $1.70, or 66.1 per cent. Attention is called to the similar data worked out pertaining to Freeport, Ill. The purpose of this exhibit is to show by comparison of the present rates to Rockford and Freeport from the Brazil-Clinton and Linton-Sullivan districts in Indiana on the one hand, and the rate from the Springfield group on the other hand, are now on approximately the same level, using the Holmes & Hallowell scale as a means by which to test the level; and that if the suspended rates are permitted to become effective, the level from Indiana will be materially lower than from Springfield.

198 I have one additional exhibit, that I would like to present at this time, my exhibit no. 39. This exhibit shows similar information as depicted in exhibit no. 38, except the mileage indicated thereon are the distances via the short tariff routes using each point of origin but once. Without going into the specific detail, we call attention to the fact that the rates from the two Indiana groups are at the present time on approximately the same rate level as from the Springfield group, and that the rate from Springfield, Illinois, proper is on a substantially higher level than from Indiana. The exhibit also shows that if the suspended rates are permitted to go into effect, Indiana will then enjoy a level substantially lower than from Springfield proper, or the entire Springfield group.

That is all I have.

(Protestant's exhibits nos. 34 to 39, both inclusive, Witness Malum, received in evidence.)

On my exhibits, either no. 38 or no. 39, I figure the distance from the Springfield group in the same manner that I do from the Indiana groups. They are computed exactly the same.

There are about thirteen mines located at Springfield proper, and they are all located in the switching district. That is the largest group of mines that are located in the northern part of central Illinois.

"Q. Where is the next largest—where is the next group located in central Illinois?

"A. We have about 25 miles north of Springfield, a mine located at Lincoln, Illinois, and then just south of Springfield about 26 miles, there is a group of mines on the Chicago & Illinois Midland Railroad.

"Q. About how many mines?

199 "A. Four mines; and there are one or two mines on the Alton Railroad south of Springfield, and one at Auburn, and one at Panther Creek."

South of the Chicago & Illinois Midland Railroad there is a group of mines in and around Staunton and Mt. Olive, and Gillespie, Pana, and Hillsboro. Geographically speaking, I would say that the mines located in and around Springfield would be comparable with the mines in and around Brazil, Indiana. They are approximately directly west of the Brazil, Indiana, group. And the mines on the Chicago & Illinois Midland might be comparable geographically with the mines located in the Sullivan-Linton district.

CROSS-EXAMINATION

In my exhibit 39 I have used Mr. Wildman's Indiana mileages. It is my understanding that these mileages are computed the same as the mileages put in by Mr. Rozene yesterday. I did not do the computing, but that is my understanding. Our rates from central Illinois to Rockford and Freeport have been for many years constructed on a 30-cent differential under the southern Illinois rates, and the mileage from our particular group has not entered into the measure or our rates; and the same way at practically all points in Wisconsin and Minnesota and the Northwest, 30 cents under. The mileage relation is not always adhered to in giving us a strict mileage relation with southern Illinois.

In my exhibit no. 39, my Springfield proper distance is the distance via the Illinois Central Railroad, Mendota, and the Chicago, Milwaukee, St. Paul & Pacific Railroad to Rockford; and the Illinois Central direct to Freeport. As to whether that is only one of six railroads that serve Springfield: I explained that in submitting certain of my other exhibits.

200 "Q. And the same way with the distance of 240 miles, which you show from the Springfield group. That is not representative of the actual movement of coal; it is just the tariff distance—the shortest tariff distance.

"A. Using each point of origin." (Tes. 169–180.)

"Q. And you have made no comparison in any of your exhibits, have you, with the rates here under attack from mines on the Milwaukee Railroad, in the Brazil-Clinton and Linton-Sullivan groups, to those two destinations?

"A. Well, I do know that the distance from the Chicago, Milwaukee, St. Paul & Pacific mines in the Brazil-Clinton group to Rockford is 235 miles, if that is what you have reference to."

I have made no comparison. That is 235 miles—well, it has been put in as 231 and as 235. I understand that those are the rates that are involved in this case; that is what is specifically involved. I have not made any exhibits or any comparison of those rates.

"Q. Now, in your exhibit no. 35—in your exhibits 36, 37, and 39, however, you take the shortest distances that exist from the shipping points shown in the tariffs to Springfield?

"A. For the Springfield group; yes, sir.

"Q. Whether any coal originates at those points or not?

"A. That is true."

The mines at Lincoln and Decatur that I show in here, with very short distances to Rockford and Freeport, do not ship any coal to Rockford and Freeport. We have not been able to ship any; the rates have been too high up there. Under the relationship, as it has existed, we have been precluded from shipping coal up there. As I explained, they ship coal within 75 miles to 100 miles—about 75 miles. There is no peculiarity regarding the situation
201 at Rockford and Freeport with regard to the shipment of coal; that same situation prevails at practically every point beyond 100 miles. During 1932 I do not know where that 20,000 tons of coal shipped to Rockford from the Springfield group originated. I could not say whether it originated at our mines in the Springfield group.

With reference to my exhibit no. 39, I have taken the shortest tariff distance via all routes using each point of origin once from the Brazil-Clinton group, to arrive at my mileage of 272 miles. In other words, Terre Haute would be used just one time via the shortest tariff routes. Then I compare that, however, with the distance from Springfield proper via only one line, that is, via the shortest line, using that point but once. I did not say in my testimony that the production of coal in the group is largely around Springfield and south of Springfield. I said that the mines of the members of our bureau are principally in and around the city of Springfield. I do not represent all of the mines in the group.

REDIRECT EXAMINATION

In answer to your question whether this mileage from Springfield proper of 197.1 miles would be comparable with that mileage from the Brazil-Clinton district; would it be the 231 miles or 235 miles via the Chicago, Milwaukee, St. Paul & Pacific Railroad: It would not be either because the 231 miles and the 235 miles, whichever one of the figures is correct, from the Brazil-Clinton group, would embrace all mines on the Milwaukee Railroad in that group. This figure of 197.1, for Springfield proper, is one point in the Springfield group. The figure of 240.3 miles would compare with the 235 miles from Milwaukee mines—mines on the Milwaukee Railroad alone.

202 RECROSS-EXAMINATION

So that my figure of 240 miles is really comparable with the 231 or 235 mile distance of the Milwaukee haul, and our rates are now based on $1.87, on about the same level.

If I were to confine my comparison to the distance—or the rates from Chicago, Milwaukee, St. Paul & Pacific Railroad mines alone, the comparable distance from Springfield would be the average distance from Illinois Central mines in the Springfield district; in other words, I understand that the distance of 235 miles, representing the distance from Milwaukee Railroad mines in the Brazil-Clinton group, is the shortest tariff route from that group. Now, to make a true comparison or a similar comparison from the Springfield group, it would be fair and proper to use the shortest tariff distance, which is via the Illinois Central, Mendota, and the Milwaukee Railroad, 198.7 miles—or 198.6 miles to Rockford.

Based on my experience in the coal business, as to what action I think the other Indiana originating lines would take in the event that the Commission were to permit the 17-cent reduction to go into effect from Milwaukee mines, I do not think there is any question but that it will spread to the other railroads serving the Brazil-Clinton and Linton-Sullivan groups, and in time go down into the southern part of Indiana.

REDIRECT EXAMINATION

The mileage of 272.7 takes in the entire Brazil-Clinton group, and the mileage of 240.3 takes in the entire Springfield group.

"Q. And the 197 is the average of all mines on the Illinois Central?

"A. No; the 197 is——

"Q. 197.1.

"A. (Continuing.) Is the distance from Springfield proper; but the average from all mines on the Illinois Central is 198.6, as
203 per exhibit no. 34; and 198.6 would be comparable with the 235 miles of the Milwaukee. On that point, to that extent, I stand corrected in my statement to you. I was in error when I made the statement to Mr. Wilkinson that the 240-mile distance was comparable with the 235 miles distance on the Milwaukee.

(Witness excused.)

R. P. De Camp, general commerce agent of the Illinois Central Railroad System, with headquarters at Chicago, Ill., testified:

I have been employed in the traffic department of the Illinois Central Railroad in various official capacities for nearly 30 years. Effective January 10, 1922, I was appointed assistant coal traffic manager. My duties in connection with that position had to do with making freight rates on coal and coke, and the defending of them before the Interstate Commerce Commission and various State commissions. Effective July 16, 1928, I was appointed assistant general freight agent, northern and western lines. My duties in this position were in connection with Interstate Commerce Commission and State commission work, in the handling of rate adjustments on commodities other than coal and coke. Effective August 24, 1931, I was appointed coal traffic manager, having in charge the making of freight rates on coal and coke, and the defending of them before the various commissions, and general supervision over the

coal and coke traffic of our railroad, which position I held until July 16, 1932, when I was appointed general commerce agent, in charge of rate matters before the Interstate Commerce Commission and the various State commissions. I am familiar with the rate adjustment here involved and with the issues involved in this particular
204 case. The Illinois Central Railroad serves coal mines located in the principal producing groups in Illinois, as well as mines located in the Linton-Sullivan district and Evansville district in Indiana, and mines located in the western part of Kentucky. In Illinois we serve the northern Illinois, Springfield, Centralia, Belleville, DuQuoin and southern Illinois groups. The Illinois Central not only publishes rates on coal between points on its own railroad, but publishes rates from producing districts on its line in Indiana, Illinois, and western Kentucky to destinations on other railroads, as well as joins in rates from producing fields on other railroads, to destinations on its own railroad. The Illinois Central Railroad serves Rockford and Freeport, Illinois, and has its own rails from the Illinois producing groups that I have named as well as from the Linton-Sullivan and Evansville groups in Indiana, and from western Kentucky to these destinations. Coal traffic on our railroad in normal years was better than 40 percent of our total freight tonnage, and at times has exceeded over 20 percent of our entire freight revenue. At the present time the percentages are not as great, due to existing conditions prevailing throughout the country. In 1931 it was 31 percent of our tonnage and 17 percent of our revenue. Now, coal mines for years have been grouped for rate-making purposes, and the decisions of the Commission are replete with the fundamentals and the principles which were observed in the making of those rate groups. The decisions of the Commission are also replete with the history of the groups, the boundaries thereof, in Illinois, Indiana, and western Kentucky, and it is not necessary for me to go into the details thereof. This record has maps submitted by interested parties showing the origin groups in what is known as the Central competitive field, comprising the states of Illinois, Indiana, and western Kentucky.

205 I have prepared a series of exhibits which I would now like to introduce, and comment thereon. The first exhibit is marked for identification as exhibit no. 40. It is a statement showing the rates and distances on bituminous coal from the principal producing groups in Illinois, Indiana, and western Kentucky, to Freeport, Rockford, and Chicago. In the first column I show the origin groups in Illinois and Indiana, as well as west Kentucky. Next I show the average distances via the short tariff routes in miles. Now, these distances are the same distances that the carriers submitted in 1931, in the 13th section proceeding, I. C. C. docket no. 23130, as per exhibit no. 285 submitted by Witness B. M. Hamilton. There has been no material change since, and I am confident that a comparison of these distances with other distances of record will not

show much variation. Be that as it may, I contend that the distances submitted by the carriers in the 13th section proceeding are a proper basis for submission here in this proceeding. The next column shows the present rates with which we are all familiar. Now, the second column I want to direct particular attention to. That visualizes what the future may hold and what we fear. In connection with the Brazil-Clinton and Linton-Sullivan groups, I have shown the suspended rates. Those are the suspended rates of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company from those respective Indiana groups. But I show them in this exhibit as standard rates for comparative purposes, as applying from the entire group, because I firmly believe that if these reductions are confirmed and approved by the Interstate Commerce Commission, the ink will not be dry upon the order vacating the suspension before
tariffs of competing lines in the same district will be issued,
206 making the same reductions. Why, it will only be a matter
of time, as I see it, in such event, before the Princeton and the Boonville groups will follow with similar reductions. In fact the Indiana operators on this record contend that if this reduction goes into effect from Brazil-Clinton and Linton-Sullivan mines on the Chicago, Milwaukee, St. Paul & Pacific Railroad, it should be extended to mines in (Tes. 180–192) the same groups, in the same amount of reduction maintained from the other groups to observe the existing differences or differentials. Now, if that should happen, which in all probability may be, all of Indiana goes down 17 cents. How long would it be before drastic requests and strong pressure would be exerted upon Ilinois roads to make a similar reduction? Now, if that were done, which is possible, it would produce lower rates to Freeport and Rockford from the large originating groups in Illinois, than apply to Chicago. For illustration, southern Illinois to Freeport and Rockford is $2.00. A 17-cent reduction would make $1.83, versus the Chicago rate of $1.95. There are routes from southern Illinois to Rockford and Freeport which apply via Chicago. The Interstate Commerce Commission in considering the coal rate structure in this territory, has at various times used the Holmes & Hallowell scale as a yardstick. Therefore I have used it in this exhibit, and I show the percentage the present rates are of the Holmes & Hallowell scale, which is represented in the next two columns of my exhibit. In the next column I show percentage, rates reduced 17 cents per ton, of the Holmes & Hallowell scale; and I have applied that to the rates involved in this proceeding—that is not the specific rates on this exhibit, of the St. Paul mines, but the same rates if applied from all the mines, for the distances shown. This exhibit shows, taking Brazil-Clinton to Freeport, that the
present rate is 64 percent of the Holmes & Hallowell scale;
207 where as from Springfield the percentage of the Holmes &
Hallowell scale to Freeport is 63.7 percent, or approximately on the same level as from the Brazil-Clinton group in Indiana. Now, this attack in this proceeding has been directly as I see it mainly at

Springfield. Therefore the relativity of Springfield on the one hand, and Brazil-Clinton on the other hand, is the point in issue. Under the suspended rates applied from the group, from Brazil-Clinton, they would represent 58.2 percent of the Holmes & Hallowell scale. Now, at Rockford, we have the same story, only there it will be noted that the level of the present rates from Springfield to Rockford is 68.5 percent of the scale, the same as would be—or the same as is the present rate from the entire Brazil-Clinton group, 68.5 percent; and the proposed rate would be 62.3 percent if applied from the entire group. The purpose of this exhibit is to show in a one-sheet, comprehensive manner, the relative levels from the basic groups in Indiana, compared with the group under attack in this proceeding, with the other related groups. It is also introduced to show what we fear the future may hold. The Interstate Commerce Commission is the guardian of the revenues of the railroads. They are the ones charged with seeing that the rates are protected, and their revenues. Therefore, I thought it might be helpful to the examiner to have such a complete picture. I hand you herewith the supporting data, being a duplicate of exhibit no. 285 in I. C. C. docket 23130 proceeding. That was introduced by Mr. Hamilton.

My next exhibit no. [redacted] is a statement taking the short line average distance from the Brazil-Clinton group on the one hand, and from the Springfield group on the other hand, taken from the answer of the respondent to the petition for suspension. In this exhibit we are dealing with the short routes. Now, I contend it
208 does not make any difference how the short route is constructed. The short route, whether it be one line on the one hand or two lines on the other hand, is still the short route. The distances shown here are the short line average distances. Taking Rockford, it shows as per other exhibits in this record, that the Chicago, Milwaukee, St. Paul & Pacific mileage from the Brazil-Clinton group is 231 miles; that is the short distance from the Brazil-Clinton group. It is the short line average distance, the short tariff distance of the St. Paul direct, via the St. Paul Railroad direct. The distance shown below is from Springfield; that is the short tariff distance, Illinois Central, Mendota, and Milwaukee Railroad. Now, I show next the present rates, what the Holmes & Hallowell scale is for those distances, the percentage the existing rates are of the Holmes & Hallowell scale when measured by the short line average distance tariff routes, and what the suspended rates would be from the Brazil-Clinton and Linton-Sullivan groups, and the percentage of the Holmes & Hallowell scale. It will be noted that at Rockford the present rate on that comparison results in Brazil-Clinton paying 75.4 percent of the scale; and Springfield paying 77.6 percent of the scale; and proposed, from St. Paul mines alone, 68.5 percent of the scale.

My preceding exhibit no. 40 showed the picture using averages from the entire group. This exhibit no. 41 shows the picture using

the short line distances as the basis. Now, by next exhibit no. 42 shows the rates—or, shows the distances first via the short tariff routes from Brazil-Clinton and Linton-Sullivan groups to Freeport and Rockford, which distances were taken from my exhibit no. 40. The rate under suspension is of course here again the rate from the St. Paul mines, but I have applied it for comparative pur-
208 poses from all mines in the group. The percentage of the Holmes & Hallowell scale is shown next—or I mean, the Holmes & Hallowell scale is shown next, and following, the percentage the suspended rates are of the Holmes & Hallowell scale.

I next show the 23922 scale for comparative purposes. I show next that the 23922 scale is 75.8 percent from Brazil-Clinton to Rockford, of the Holmes & Hallowell scale, and that the present rates are 68.5 percent of the Holmes & Hallowell scale; and that the suspended rates would produce 62.3 percent. I show in the last column the percent the present rates are of the 23922 scale. The 23922 scale in this case has been progressed 8 cents for each 25-mile block, the same as all other parties in this record who have used this scale, have progressed it.

My last exhibit, no. 43, is an exhibit showing the number of tons of bituminous coal from mines in Illinois, Indiana, and west Kentucky, received at Freeport via all lines. The authority for this exhibit is Agent C. W. Galligan's Statistical Coal Bureau, an organization voluntarily maintained by the railroads under the supervision of Mr. Galligan, to which movements are reported. In the 23130 case, a similar exhibit was presented—I have forgotten the number; but it showed I think the 1930 movement, and there was also furnished in that record the 1929 movement. Therefore the 1929 and 1930 movements are taken from the 23130 record. The 1931 and 1932 movements have been added in this exhibit. They all emanate from the same source of production. The exhibit speaks for itself, and it is interesting to note one feature, and that is this, that notwithstanding the disruption of mining in Illinois and Indiana during 1932, due strike conditions in those fields, the total tonnage for 1932 from the Indiana mines shown, approximated 1931 ton-
209 nage. The last figures on the exhibit show the grand total, all groups, and give the Commission some idea of the amount of tonnage to Rockford alone that might be affected as a result of this proceeding. I referred to the showing that the tonnage from Indiana held up in 1932. Illinois, as a whole, decreased from 172,000 tons plus to 157,000 tons plus. In addition—the tonnages which Mr. Seaberg gave in his testimony were the same as the tonnages that are shown in this exhibit. I recognized them from his testimony. They no doubt were procured from the same source. In addition to the tonnages involved to Rockford and Freeport, there would be tonnage to the intermediate territory, of which I have no record, nor is there any record kept except by the individual lines; in addition thereto, there is the threatened effect on the Chicago ton-

nage, which the Commission's records show completely, the large volume thereof.

"Q. Mr. De Camp, what would be the effect of a general reduction in the rates on coal in any substantial amount on the revenues of the Illinois Central Railroad and on the revenues of the other Illinois lines.

"A. It would have a very drastic effect, because coal is one of the principal commodities handled by the carriers in this territory."

(Protestants' exhibits nos. 40 to 43, both inclusive, Witness De Camp, received in evidence.)

Now, in conclusion, I wish to say that this proceeding has, as I see it, the effect of splitting a group, in that lower rates are proposed from certain mines than from all mines. Based on years of experience I have every reason to believe that that condition could not be maintained. Other roads serving the same groups would exert every effort possible to meet the suspended rates, if they were allowed to become effective. I do not see how, therefore,

210 the reductions could be refused from the other Indiana groups south of these in issue. For illustration, I cannot conceive that the Chicago & Eastern Illinois Railroad, which serves the Princeton group as well as the Linton-Sullivan and Brazil-Clinton groups, would sit idly by and not try to adjust their rates so as to participate competitively in the destination markets here in issue. And I have every reason to believe that if a uniform reduction of 17 cents prevailed from the Indiana groups, which compete so keenly with the Illinois groups, it would only be a matter of time before the entire rate structure would be disrupted and unnecessarily reduced. For that reason the Illinois Central Railroad has joined with the Alton, the Wabash, the Chicago & Illinois Midland, the Chicago, Burlington & Quincy, and the Missouri Pacific in petitioning that the proposed rates be suspended, and that the Commission enter into a full investigation relative thereto. This concludes my testimony, which is offered on behalf of the Illinois Central Railroad. Anyone in the room who wants to adopt my presentation, they may have the privilege of doing so. (Tes. 192–201.)

CROSS-EXAMINATION

Referring to my exhibit no. 43: The increase from the Princeton district in 1932 of 43,794 tons over 6,733 tons in 1931, shipped to Rockford, was due I understand to the inclusion of some origin points in the Princeton group that were before in the Boonville group. To get the correct picture, you must add the total of the Princeton and Boonville groups together, and then get the relativity of the others. That shows that in 1931 those two groups together shipped 42,560 tons, and in 1932 they shipped 45,688 tons. In 1931 there was 35,000 tons originated in the Boonville district which took a higher rate than the Princeton district.

Asking whether certain mines in the Boonville distict were shifted into the Princeton district, taking a lower basis of
211 rates than theretofore: I am not positive on the rates, what rates were applied; but the compiler of the exhibit in Chairman Gilligan's office informed me that the tonnages that were formerly reported in the Boonville group in 1931, were in 1932 transferred to the Princeton group, and took the Princeton rates, as I understand it.

I spoke about the disruption of the grouping. The present Brazil-Clinton and Linton-Sullivan has been long standing as an origin group; I could not say how many years. I presume it has been an origin group as long as the Springfield group has been an origin group, which may be 30 or 40 years. I do not know.

On exhibit no. 43, with reference to the movement from the Springfield group to Rockford: It is true that during 1932 there were a number of mines that continued to operate regardless of the strike conditions, which prevailed throughout the State generally. I understand those mines were right around Springfield proper.

A lot of my exhibits are not based upon a forward look, which I cannot see, and I am not at all guessing and fearing dire consequences. I heard from the witness stand the battle cry of the Indiana operators, "If Brazil-Clinton, Linton-Sullivan mines on the St. Paul Railroad get the 17 cents, we too." Mr. Waffle stated on the witness stand that this reduction if made from the Brazil-Clinton and Linton-Sullivan groups, ought to be applied from all of the mines in those groups.

"Mr. WAFFLE. I did not make any such—in those two groups, yes.

"The WITNESS. Yes.

"Mr. WAFFLE. But not Princeton, Ayrshire, and Boonville.

"The WITNESS. And when it came——

"Mr. WAFFLE (continuing). I did not mention them.

212 "The WITNESS. When it came to the southern groups, in answer to a request of counsel—or in answer to a question of counsel, you said you thought the differentials ought to be maintained; and you could not, as representing the operators in all those different groups, take any different position."

I stated that from time immemorial coal mines have been grouped. Inquiring as a corollary to that, whether from about the same genesis they have been differentially related into these markets: Yes, there have prevailed between the various producing groups differences or differentials, some of which may have been prescribed by the Commission and others of which time has grown up with. There was a difference, so to speak, maintained between these Illinois groups and Indiana groups, to Rockford, Freeport, and this territory, but there comes a time when your differences cannot be disturbed, if as the result thereof the whole rate structure is to be threatened, and further if it can be shown, which I think this record shows conclusively in my own mind, that there is no warrant or necessity for

reducing the existing rates, even though they might have had some sort of a differential relationship in years gone by. It was the reduction, the 17-cent reduction in the Illinois rates to Rockford and Freeport that brought about this whole situation. That reduction was the result of the order of the Illinois Commission, and the Interstate Commerce Commission in reviewing the situation in 23130 did not see fit to change it. As to whether my line was quite active in trying to have that relationship restored in 23130, I do not know; I did not attend the rate meetings where it was discussed (tes. 201–207).

(Witness excused.)

213 Statement by Mr. Rosenbaum: Mr. Examiner, the Consolidated Coal Company of St. Louis is a protestant here, but anything that we might add to the record would be merely cumulative, and therefore we do not intend to present anything further (tes. 207).

Statement by Mr. Gladson: Mr. Examiner, in order that there may be no misunderstanding of our position, the position of the other protestant carriers, I want to say that we do not feel it necessary to introduce any further evidence in view of the very adequate statements of fact made by the Illinois Central witness and the other protestants' witnesses. Our position is the same; we are still protestants (tes. 208).

Mr. JONAS WAFFLE, recalled, testified:

I want to refer briefly to Mr. Rozene's exhibit no. 31. As I understand that exhibit it purports to show the distance via the shortest tariff routes to Rockford from the mines listed in the left hand column of the exhibit, based on the distances from the post office location of the mine. Even if those distances were justified, and had any merit to them, they should be figured from the railway station for the mine rather than the post office address of the mine, which might be something entirely different from the railroad location of the mine. I see on this list the Carbon Fuel Company, the post office address of which is Marion. I take it from this exhibit that a rate of $2 per ton will apply from that mine to Rockford via the Illinois Central, Mendota, and the St. Paul Railroad for a distance of 340.6 miles, figured from the city of Herrin [Marion], on the Illinois Central. I mean Marion, on the Illinois Central. The Carbon Fuel Company is not located on the Illinois Central Railroad. It has a local mine on the Chicago, Burlington & Quincy Railroad.

214 The shortest tariff route distance from that mine over the rails of the Burlington Railroad—being the only initial line that publishes the $2 rate from that mine—is 394.2 miles, in lieu of 340.6 miles. The 394.2 miles is figured from Herrin, Illinois, which is the railroad station for that mine as shown in the Mine Directory of the Burlington Railroad. I will call attention next to the Carterville Coal Mining Company. It shows a rate from that mine via the Illinois Central, Mendota, and the Milwaukee Railroad. It also shows the distance as 332 miles figured from Carterville. That mine

is local on the Missouri Pacific Railway, and the shortest tariff route figured from Herrin, Illinois, is 412.9 miles, in lieu of 332 miles. Next is the City Lake Coal Company, and he routes that via this Illinois Central, Mendota, and the Milwaukee Railroad. That mine is located jointly on the Burlington and the Missouri Pacific. The shortest route, shortest distance is 394.2 miles, figured from Herrin, Illinois, and that route is via the Chicago, Burlington & Quincy, Mendota, and the Chicago, Milwaukee & St. Paul Railroad. Next I come to the Cosgrove & Meehan Coal Company, mine no. 1. These distances and exhibits are introduced here to show that from these mines the distance is something else than it actually is. From the Cosgrove-Meehan Coal Company mine no. 1, the distance is 391.2 miles instead of 340.6 miles. That distance is figured from Freeman, Ill., via the Chicago, Burlington & Quincy, Mendota, and the Chicago, Milwaukee, St. Paul & Pacific Railroad. The Cosgrove-Meehan Coal Company mine no. 3 is local on the Missouri Pacific Railroad, located at Franco, no. 3, Illinois. The distance is 348.4 miles in lieu of 340.6 miles. The route from this mine is via the Missouri Pacific Railroad, Marion, Illinois Central, Mendota, and Illinois Central. Old Ben Corporation mine no. 11 is local on the Chi-
215 cago, Burlington & Quincy Railroad. The distance from Christopher, on the Burlington Railroad, to Rockford, is 381.2 miles, in lieu of 332 miles. The Puritan Coal Company is local on the Burlington Railroad, and the distance is 394.2 miles, figured from Herrin, Ill. The Skaggs Coal Company is local to the Burlington—Missouri Pacific. The distance from Herrin, Illinois, via the Burlington, is 394.2 miles. The Spillerton Coal Company is local on the Chicago & Eastern Illinois, at Spillerton, the distance from that mine being 384.7 miles in lieu of 340.6 miles. The Wallace Coal Company is local on the Missouri Pacific, located at New Bruce, and the distance is 342.8 miles instead of 340.6 miles.

I believe Mr. Rozene read some figures into the record in reference to a similar set-up to Freeport and DeKalb, and of course the same errors are reflected in those figures as I have shown here. Correcting those figures would of course change the average distance shown from all of those mines. Mr. Rozene's exhibit no. 32 shows the production at the southern Illinois mines during the calendar year 1932, and on page C indicates the tonnage produced at the mines on each railroad, both local and joint. Of course those tonnages are duplicated. The tonnage appearing for the Chicago, Burlington & Quincy Railroad would likewise appear for the Illinois Central and the Missouri Pacific and other joint mines. However, that does not give a true picture of what actually happens at the joint mines, so far as the movement of tonnage is concerned. For that reason I would like to introduce an exhibit.

(Intervener's exhibit no. 44, Witness Waffle, received in evidence.)

My exhibit no. 44 is taken from the Illinois Coal reports for 1931.

I have set up in this exhibit for each of the southern Illinois
216 mines the actual tonnage shipped out over each of the origin railroads that serve such mines; and in that connection I wish to call specific attention to the figures at the bottom of the tabulation, which show, where the Illinois Central is joint with other lines, they handled but 23 percent of the total tonnage, while the Chicago, Burlington & Quincy and Missouri Pacific handled 71 percent. Now, I make that comparison for the reason that great stress has been laid upon the short tariff route distance from the Illinois Central mines to Rockford and Freeport, leaving the assumption that a very substantial part or major part of the southern Illinois tonnage to Rockford and Freeport moved over the Illinois Central Railroad, and therefore it is quite proper to use the Illinois Central distance. While this does not show definitely the percent of coal that moved to Rockford and Freeport via the various routes, it does show that certainly the Illinois Central Railroad does not enjoy a very large percentage of the coal from the joint mines in southern Illinois. And what may be true in a general way as shown by this statement is very likely true in reference to the movement to the points involved in this proceeding. As to whether I think that would be true to points where the Illinois Central has the single line route: I would say, if you will check into it, that a very substantial tonnage is coming out of southern Illinois into Rockford over the Chicago, Burlington & Quincy Railroad, and out of mines on the Missouri Pacific Railroad, that moves over routes other than the Illinois Central. That was demonstrated very clearly in the recent Beloit case. That would be true of the joint mines too.

I have not the 1932 figures, since the Illinois Central changed its policy; they are not out yet. There is just one other point that
217 I want to raise at this time, and that is with reference to a lot of obsolete billing points that creep into the compilation of mileages not only from Illinois, but from Indiana. I refer specifically now to Rozene's exhibit 27, and I merely call attention to a lot of mines that appear there for the Monon Railroad; and to show the extent to which the obsolete billing points in tariffs affect the situation, I would like to call attention to some of these Chicago, Indianapolis & Louisville stations. Number 1 is Andromeda. Prior to April 1, 1916, 17 years ago, there was one mine at that point, mine no. 1 of the Sherry-Hill Coal Company. That was abandoned on April 1, 1916. They show Gilmore. Gilmore mine no. 7 at that point was abandoned on February 2, 1921. They show Howesville. All of the mines at Howesville were abandoned—there were two or three small strippers around there—in 1918. Little Giant mine no. 14 was abandoned on February 2, 1921. At Patricksburg there was a mine that was abandoned in 1925, a mine of the Imperial Coal Company. The Rainbow no. 5 mine of the Monon Coal Company was abandoned in February, 1915. At Rowlands, the mine of the Rowlands-Power Consolidated Collieries was abandoned in June 1917. At Stewards, the mine of the Stewards Coal Com-

pany, the only mine at that point, was abandoned April 1, 1927. I can go on through the other origins shown in this exhibit, and make about the same sort of a showing. And right there, in reference to this Monon situation, I have been corresponding with that railroad for 18 months, trying to get them to eliminate these obsolete points from their tariffs, but for some reason or other they have not seen fit to do so. I think it is about time in developing mileages that we find out what the shipping points are, and what the mines are, and develop the mileages from those points, and not from a lot of obsolete nonshipping points that may have had a coal mine ten,
218 fifteen or twenty years ago. That is exactly what the Commission held in Docket No. 23922, based on our recommendation. As far as possible in our exhibits we have eliminated all of the dead timber.

On exhibit no. 27, there are some 26 stations shown on the Illinois Central in southern Illinois. It is true that the mine directory of the Illinois Central does not show mines at a number of these stations. I think there are about 19 mines on the Illinois Central in southern Illinois, and I do not know how they can get 26 shipping points. A check of the mine directory shows about 19 shipping points. There is some duplication in there. To include 26 stations, it always works out in reducing the average haul from the southern Illinois group as a whole. Where you increase the number of billing points on a railroad that has the shortest distance, you automatically decrease the average of the entire group. Now, just reverse that, and increase the billing points from the mines that have—from the railroad that has the longest haul, and you will inflate the mileage. That is what has actually been done in these exhibits 27, 28, and 29 in regard to southern Illinois on the one hand, and Indiana groups on the other hand. In the Brazil-Clinton group in Indiana they show ten routes via the longest haul carrier, the Pennsylvania, where there are in fact only seven points that are actually shipping coal. Mr. Rozene included in his exhibit some obsolete points on the Pennsylvania that have not had a coal mine for 10 years. The result of that in these exhibits is to show a longer average distance from Indiana than the actual average, and a shorter average distance from the Illinois mines than the actual average (tes. 208–217).

219 CROSS-EXAMINATION

I think it is true that the same tariff situation with reference to obsolete billing points being carried in the tariffs exists in Illinois as in Indiana, but they have been used in Illinois to very good advantage. In preparing this exhibit, I did not show the billing points I took, and I should have done that, and if the examiner so desires, I will be very glad to file an exhibit within 10 days, showing it. I think every exhibit should show the origin points. It was just an omission on our part.

(Permission to file granted.)

Referring to my exhibit no. 8, page 4, southern Illinois to DeKalb: On the Missouri Pacific, I show 23 billing points. There is a reference mark (f) there. I say "Group 1, via East St. Louis, Litchfield and Madison, Benld, Chicago & North Western", and the same from or via group 10. I have no list of the mines included in group 10. They are some of the old Wabash, Chester & Western mines, and rates are published from those points in the Missouri Pacific tariff, on the going basis—southern Illinois basis. Getting back to the Illinois Central, I show 19 points. DuQuoin is not included in that group.

With reference to the distances I have shown to Rockford, the distances I believe the Commission ought to use to measure the rates to Rockford in comparison with the rates to other points and asking if I am satisfied to have the Commission use the distances I have put in here as the measure of the rate to Rockford in relation to other rates in the same general territory: I really believe in the distances that I have put in; I have tried to make them as nearly accurate as possible. If you have in mind that for a certain distance the
220 rate to some other point ought to be fixed on that distance, I do not think I would answer your question "Yes." We are dealing with a situation here—a relative situation—southern Illinois to Rockford and Freeport. The Rockford and Freeport rates from southern Illinois may be too low.

I would not say that the $2 rate from southern Illinois to Rockford is too low without analyzing the situation very carefully. It all depends upon what you measure it by. You can find plenty of yardsticks to find fault with almost any rate.

With reference to my remarks about the Missouri Pacific and the Burlington handling business via their circuitous routes in comparison with the direct route of the Illinois Central: It is not by any means my position that the direct routes only ought to handle the business and not the circuitous routes. I had nothing particular in mind in making any comment about the circuitous lines handling the traffic. It was simply to point out that the short line of the Illinois Central Railroad does not by any means measure the amount of transportation service performed out of either southern Illinois or central Illinois, because there are other origin roads, all of which have many routes to a given destination. The Missouri Pacific Railroad has a dozen or 15 routes to Rockford. Those other origin roads meet the competition of the short line or direct route. I am not advocating at all the elimination of the circuitous routes even from Indiana mines in meeting short-line competition. My purpose is that in measuring group with group, the average of the short tariff routes should be used rather than singling out the shortest distance between two given points.

Asking if it is not quite possible that more aggressive solicitation has a lot to do with the routing of traffic via circuitous lines of the Missouri Pacific and Chicago, Burlington & Quincy Railroads, rather than via the Illinois Central: There are a great many

factors that always enter into that. It is solicitation, it
221 is friendship, it is reciprocity, and whatnot.

With reference to the last exhibit of mine, I do not know what the situation was for the year 1932; it is not yet available. I tried to get it. It will be available within 2 or 3 weeks. I do not know if there has been some change in the situation, except that we do know the Illinois Central Railroad finally closed its own fuel mines and went into the commercial markets for the purpose of securing commercial traffic; and perhaps that may increase the Illinois Central tonnage out of Illinois (tes. 217–223).

GEORGE J. LEAHY, Chicago, testified:

I am vice president of the Binkley Coal Company. We own and operate mines in Illinois and Indiana, and we sell coal on exclusive selling arrangements from Kentucky, West Virginia, Virginia, Oklahoma, South Dakota, Kansas, and Nebraska. I am familiar with the sale of coal in the Rockford-Freeport market, and the rest of the destinations involved in this case. Referring to DeCamp Exhibit 43, a statement of tonnage shipped to Rockford from Brazil-Clinton and Linton-Sullivan in 1929, from my knowledge of the movement of coal from those two groups to Rockford I cannot exactly state whether or not those tonnage figures are correct, so far as the Linton-Sullivan group is concerned, but the Brazil-Clinton group is absolutely not correct. My company alone shipped more than twice the amount of coal shown as having come from the Brazil-Clinton group in 1929, into Rockford. My company has for some years shipped a substantial quantity of coal from the Brazil-Clinton group to Rockford. The largest tonnage that we have had in the Rockford area in the last 10 years has been to the
Rockford Electric Company, the power-generating plant at
222 Rockford. Prior to 1930 we shipped a very substantial tonnage to that industry. Those shipments have been made from our mines, going back to about 1914 or 1915. The company—the mines prior to their ownership by the Binkley Coal Company, were owned by the Bogle Coal Company. Shipments were made from 1915 to 1920, or thereabouts, by the Bogle Coal Company, and since that time by the Binkley Coal Company, coming from the same mines. I heard the statement made on the witness stand by one of the witnesses that that company is not using as much coal now as it formerly did; that it was getting power over a high tension line from Waukegan, Ill. As to where the coal comes from that furnishes that power that is generated at Waukegan: The power generating plant at Waukegan is a unit, a subsidiary of the so-called "Insull Empire", and the coal is furnished by another subsidiary of the so-called "Insull Empire", the Peabody Coal Company, the understanding being that it comes from the Springfield, Illinois, section. The electricity that was formerly generated by Indiana coal at Rockford is now generated by Illinois coal in Waukegan, and the electricity is transported by high tension line to Rockford. We have

shipped coal to Rockford since August 1930. The reduction of 17 cents per ton in the rates from the Illinois mines to Rockford, which occurred in August of 1930, had an effect upon the price we were able to get for our coal delivered in Rockford; it had an effect on the price, of course, immediately on the date that the reduced rate was put into effect, the intrastate rate from Illinois mines. The effect was to decrease our price. We have been shipping coal to Rockford all through 1932 and 1931; we shipped continuously there from 1914 or 1915. We have had to shrink our mine price continually
223 in order to continue those shipments. I might explain that.

The furnishing of coal to the Rockford Electric Company came about by a contract having been secured by the Bogle Coal Company with the Rockford Electric Company prior to the war. It was a low price contract, comparatively low price contract. When war time came, and high-priced coal came, the Bogle Coal Company stood on its contract, and delivered at the contract price, and saved thereby the Rockford Electric Company an enormous amount of money. It so happened that when the 1920 troubles came about, the strikes, the union strikes, in the coal mines, and the strikes on the railroads, with a tie-up of transportation and consequent extremely high prices of coal, another contract had been made, and the same situation repeated itself. The Rockford Electric Company felt that it had been served properly by this coal company in the past, and therefore, they have permitted the successor company, the Binkley Coal Company, to maintain—or rather, to retain this relationship, and ship coal—however, only on the basis of meeting competitive prices. The freight rate to Rockford is about twice the cost of the coal at the mine. In order to hold on to that business, pending what we hope to be an adjustment of that relationship, we have shrunk our prices very materially. The greatest competition in Rockford, both from my experience in selling coal in that town and in the district, and also from the tonnage submitted by the witness DeCamp in his exhibit no. 43—the greatest competition there is southern Illinois coal.

Brazil block coal is a different coal from Indiana, that occurs elsewhere in Indiana or Illinois. The tonnage production of that grade of coal is very limited indeed, possibly not more than 1 percent of the coal production of Illinois, and possibly not that much.
224 But it has peculiarities in having a very small amount of ash, and being practically clinkerless, due to its high fusion temperature, so that it is in demand in certain cases. Asking if it is a common occurrence to have a consumer go from one group or one district to another: The sale of coal in the last 5 years to an industrial concern, has become entirely a matter of cost of making a thousand pounds of steam. That is the unit cost, than which no other comparison can be made; and usually, when the coal contract expires with the industrial, that industrial invites the competing companies, whether they be from western Kentucky, northern Illinois, southern Illinois, central Illinois, or Indiana, to come in and

make tests in its plant; and the cost of making the steam, of course, is relative to the number of pounds of steam that are made by each pound of coal, as well as by the price charged for that coal. If Indiana can make steam cheapest this year, undoubtedly, the contract would go to an Indiana producer. Next year, or the next six months, another test might be run, and the price of the Illinois coal might be changed, and the man who made steam the cheapest on the next test would get the business. Asking if it is a fact also that in the sale of coal one of the competitions we run into is the effort of the operators to balance their sales of lump and steam coal in order to keep operating: The size of the coal produced at the time must absolutely be balanced in the sale of the coal or else you cannot keep in operation. If the lump coal is sold to advantage, then they can, and must possibly, make a lower price on their screenings, in order to move them. Also sizes must be moved currently. That has a great deal to do with the change of an industry from Indiana coal one year, or one period, to Illinois coal another period (tes. 223–231).

225 CROSS-EXAMINATION

I would say my company controls the output of 4 mines in Illinois and 13 or 14 mines in Indiana. I would like to add that the total from the four mines in Illinois is so large that the tonnage that is produced in Illinois is almost exactly the same as what is produced in Indiana. That is, we produce 1,500,000 tons in Illinois and 1,500,000 tons in Indiana each year. Those 4 mines are in Perry County, Williamson County, and Saline County, Illinois. There are 2 in southern Illinois and 2 in Belleville group. The coal that is produced at those Illinois mines moving to Rockford had the benefit of the 17-cent reduction in 1930. During 1931 and 1932 we continued to ship from our mines in Indiana to Rockford. As to why we did not shift our tonnage from our Indiana mines to our mines in southern Illinois: We had sold Indiana coal, and we had to deliver what we sold. We shipped a great deal of coal from our southern Illinois mines to Rockford during the past 2 years. On Indiana coal during the years 1931 and 1932, I would say five or six contracts that we had there, but there was one of them that was 75 percent of the tonnage, at least. That contract might be susceptible to another interpretation—to a great many interpretations, but the practical effect of it is absolutely a year-to-year basis. Commencing with 1932, we did have contracts for the delivery of coal during that period from our Indiana mines; it was not optional with us; it was optional with the purchaser as to whether he would cancel his contract. He did not cancel his contract.

When I spoke of finding my strongest competition with southern Illinois coal, we meant southern Illinois coal compared with Indiana coal. We find southern Illinois coal to be our strongest compe-
226 tition because it is a very good grade of coal there. Generally speaking, it is a better grade of coal than our Indiana coal.

It is inherently a better grade of coal. That possibly is—that inherent increased value is possibly increased [by increased] by better preparation, more expensive preparation at the plant. We prepare our coal; we give it the finest preparation that can be had, both in Illinois and Indiana. The mines in Illinois are generally very much larger than the mines in Indiana, so that there the best preparation can be had. A mine in Indiana that is going to produce 500 tons per day can have a certain preparation, and we have that preparation, and it is the best that 500 tons per day can justify. A mine in Illinois which will produce 5,000 tons per day, or ten times as much, can have a much better preparation. As to what our preparation of the coal is: We screen the coal in the normal way. Out of 26 mines, we have one washer; that is on the Big Rour in southern Indiana. We do not dry it. Of our shipments from our mines in Illinois, I really could not say what percentage to Rockford originates within the Belleville district as compared with the southern Illinois district. I would say that the tonnage is almost the same, though. That is, roughly, we ship about the same amount of Belleville coal as we do Saline County coal into Rockford. This Belleville district coal is a much lesser amount than what we ship from Indiana mines.

I could not give our total tonnage for 1932 moving to Rockford from both Illinois and Indiana. The only tonnage I have is the 1932 tonnage that moved to the Rockford Electric Company. We did move some from Indiana. As to what that was: I would like to give you this comparison there, as between 1929 and 1932. In
227 1929 we shipped to the Rockford Electric Company 61,000 tons. And in 1932 we shipped to the Rockford Electric Company 23,000 tons, or a decline from 61,000 tons to 23,000 tons. I would say that was 90 percent of the coal that they consumed. In addition to that, we shipped some other coal from Indiana, during 1932, to other industries in Rockford. Also from our Illinois mines. Asking whether, if we got a reduction in our rates from Indiana, would we shift all of our tonnage to our Indiana mines: We do not have anything to do with shifting our tonnage. Oftentimes a plant that wants to buy coal gives us an opportunity to make the test run on Illinois coal, that is making a test run on Indiana coal. It depends entirely on their judgment which one they will take. We have nothing to do with it.

Inquiring whether, if the rate was put back to its former relationship with the southern Illinois rates, we would be able to get a better price for our coal that goes into Rockford from Indiana again: I might answer that by saying that we cannot continue to furnish coal, our Indiana coal, to the Rockford Electric Company, on our present price basis. We have receded to this price level only with the thought in mind that the Interstate Commerce Commission would restore the relationship between Indiana and Illinois that was in effect for 25 years prior to the action of the Illinois Commerce Commission in 1930. If it becomes evident, and the Commission's

decision in this case indicates that our thoughts are wrong, and that the present level of rates is going to continue for all time, we will surrender, and must surrender the business of the Rockford Electric Company. I have no doubt at all that it will go to Illinois; I do not know if it will go to southern Illinois. We will try our best to get it for our Illinois mines.

228 "Q. (By Mr. WILKINSON.) Mr. Leahy, you spoke about the inherent superior qualities of southern Illinois coal as compared to Indiana coal. It is capable of standing a higher freight rate than the Indana coal, and substantially higher, is it not, with which it is in competition?

"A. I think it is one of the axioms of rate making that the greatest product—that is, the product of greatest value can stand a higher freight rate, whether it be coal or any other material" (tes. 231–238).

(Witness excused and hearing closed.)

229 *Exhibit 1. I. & S. Docket 3843. Witness Averitt*

Statement showing tariff routes, rates, and mileages from mines of protestant, Consolidated Coal Co., located at Mt. Olive, Ill., compared with rates and distances from mines served by C., M., St. P. & P. R. R. in Clinton and Linton, Indiana, districts, to Rockford, Ill.

FROM MT. OLIVE, ILL.

Route	Miles	Tariff rate	Percent H. & H.[1] scale	Rate based I. C. C. 23922[2] extended
Wabash Ry., Chicago, Ill., C. & N. W. Ry	335	170	55	231
Wabash Ry., Brisbane, Ill., E., J. & E. Ry., West Chicago, Ill., C. & N. W. Ry	307	170	58	223
Wabash Ry., Chicago, Ill., C., M., St. P. & P. R. R.	333	170	55	231
Wabash Ry., Newell, Ill., C., M., St. P. & P. R. R.	341	170	54	231
Wabash Ry., Manhattan, Ill., C., M., St. P. & P. R. R.	297	170	60	215
Wabash Ry., Brisbane, Ill., E., J. & E. Ry., Spaulding, Ill., C. M. St. P. & P. R. R.	312	170	58	223
Wabash Ry., Brisbane, Ill., E., J. & E. Ry., Wayne, Ill., C. A. & E. R. R., Elgin, Ill., C., M., St. P. & P. R. R.	312	170	58	223
Wabash Ry., Decatur, Ill., I. C. R. R.	280	170	63	215
Average	315	170	58	223

FROM CLINTON, IND., GROUP

C., M., St. P. & P. R. R., via Joliet, Ill.	231	[3] 170 [4] 187	69 75	199
C., M., St. P. & P. R. R., via Bensenville, Ill.	245	[3] 170 [4] 187	67 74	199

FROM LINTON, IND., GROUP

C., M., St. P. & P. R. R. via Joliet, Ill.	275	[3] 175 [4] 192	65 70	207
C., M., St. P. & P. R. R. via Bensenville, Ill.	289	[3] 175 [4] 193	63 69	215

[1] Holmes and Hallowell 69 I. C. C. 11.
[2] I. C. C. 23922 (sub. 2) mimeographed.
[3] Suspended.
[4] Present.

230 *Exhibit 2. I. & S. Docket 3843*

Coal from Indiana to Illinois—History of rates on bituminous coal, carload, from Clinton, Ind., Linton, Ind., Springfield, Ill., and Southern Illinois mining groups, in cents per net ton

TO ROCKFORD, ILL.

Date	Districts									
	Clinton, Ind.		Linton, Ind.		Springfield, Ill.			Southern Illinois		
	Rate	Tariff authority	Rate	Tariff authority	Rate		Tariff authority	Rate		Tariff authority
					Interstate	State		Interstate	State	
Jan. 1, 1910	90	Q	100	X	95.3	95.3	A	115.2	115.2	A
Dec. 1, 1910	100	R	110	Y	105.3	105.3	B	125.2	125.2	B
Dec. 10, 1910	97	S	107	Y	102.3	102.3	C	122.2	122.2	C
June 10, 1911	102	S	107	(1)	102.3	102.3	(1)	122.2	122.2	(1)
Apr. 1, 1913	102	(1)	107	(1)	102.0	102.0	D	122.0	122.0	D
Dec. 1, 1916	107	T	112	T	102.0	102.0	(1)	122.0	122.0	(1)
Apr. 1, 1917	107	(1)	112	(1)	107.0	[1] 102.0	[3] E	127.0	[1] 122.0	[3] E
Apr. 15, 1917	107	(1)	112	(1)	[1] 107.0	107.0	[3] F	[1] 127.0	127.0	[3] F
July 1, 1917	122	T	127	T	122.0	[1] 107.0	[3] G	142.0	[1] 127.0	[3] G
Oct. 16, 1917	122	(1)	127	(1)	[1] 122.0	122.0	[3] H	[1] 142.0	142.0	[3] H
June 25, 1918	150	T	155	T	150.0	150.0	[3] H [3] I	170.0	170.0	[3] H [3] I
Oct. 5, 1918	152	T	157	T	152.0	152.0	[3] J [3] K	172.0	172.0	[3] J [3] K
Aug. 26, 1920	213	U	220	U	213.0	202.5	L	241.0	229.5	L
Feb. 19, 1921	213	(1)	220	(1)	[1] 213.0	213.0	[3] L	[1] 241.0	241.0	[3] L
July 1, 1922	192	V	198	V	192.0	192.0	M	217.0	217.0	M
July 19, 1925	187	W	192	W	187.0	[1] 192.0	[3] N	217.0	217.0	(1)
May 20, 1926	187	(1)	192	(1)	[1] 187.0	187.0	[3] N	217.0	217.0	(1)
Aug. 20, 1930	187	(1)	192	(1)	[1] 187.0	170.0	[3] O	[1] 217.0	200.0	[3] O
Aug. 1, 1932	187	(1)	192	(1)	170.0	[1] 170.0	[3] P	200.0	[1] 200.0	[3] P
Dec. 23, 1932 (suspended)	170	W	175	W	170.0	170.0	(1)	200.0	200.0	(1)

231 TO FREEPORT, ILL.

Jan. 1, 1910					94.9	94.9	A	114.8	114.8	A
Dec. 1, 1910					104.9	104.9	B	124.8	124.8	B
Dec. 10, 1910					101.9	101.9	C	121.8	121.8	C
Apr. 1, 1913	107	Z	112	Z	102.0	102.0	D	122.0	122.0	D
Dec. 1, 1916	112	AA	117	AA	102.0	102.0	(1)	122.0	122.0	(1)
Apr. 1, 1917	112	(1)	117	(1)	107.0	[1] 102.0	[3] E	127.0	[1] 122.0	[3] E
Apr. 15, 1917	112	(1)	117	(1)	[1] 107.0	107.0	[3] F	[1] 127.0	127.0	[3] F
July 1, 1917	127	AA	132	AA	122.0	[1] 107.0	[3] G	142.0	[1] 127.0	[3] G
Oct. 16, 1917	127	(1)	132	(1)	[1] 122.0	122.0	[3] H	[1] 142.0	142.0	[3] H
June 25, 1918	155	AA	160	AA	150.0	150.0	[3] H [3] I	170.0	170.0	[3] H [3] I
Oct. 5, 1918	157	AA	162	AA	152.0	152.0	[3] J [3] K	172.0	172.0	[3] J [3] K
Aug. 26, 1920	220	BB	227	BB	213.0	202.5	L	241.0	229.5	L
Feb. 19, 1921	220	(1)	227	(1)	[1] 213.0	213.0	[3] L	[1] 241.0	241.0	[3] L
July 1, 1922	198	CC	204	CC	192.0	192.0	M	217.0	217.0	M
Oct. 10, 1922	192	DD	198	DD	192.0	192.0	(1)	217.0	217.0	(1)
July 19, 1925	187	W	192	W	187.0	[1] 192.0	[3] N	217.0	217.0	(1)
May 20, 1926	187	(1)	192	(1)	[1] 187.0	187.0	[3] N	217.0	217.0	(1)
Aug. 20, 1930	187	(1)	192	(1)	[1] 187.0	170.0	[3] O	[1] 217.0	200.0	[3] O
Aug. 1, 1932	187	(1)	192	(1)	170.0	[1] 170.0	[3] P	200.0	[1] 200.0	[3] P
Dec. 23, 1932 (suspended)	170	W	175	W	170.0	170.0	(1)	200.0	200.0	(1)

[1] No change in rates from previous issue. Shown as information only.
[3] Tariff reference covering interstate rates.
[4] Tariff reference covering Illinois intrastate rates.

232 *Tariff references*

Reference	Road	Tariff no.	I. C. C. no.	Reference	Road	Tariff no.	I. C. C. no.
A	I. C. R. R	1520	E-1052	P	I. C. R. R	3100-G	E-1710
B	I. C. R. R	1732	E-1143	Q	C. & E. I. Ry	1200-B	2475
C	I. C. R. R	1796	E-1185	R	C. & E. I. Ry	1200-D	2554
D	I. C. R. R	2073	E-1265	S	C. & E. I. Ry	1200-E	2576
E	I. C. R. R	2456	E-1333	T	C., T. H. & S. E. Ry	798-E	174
F	I. C. R. R	2466		U	C., T. H. & S. E. Ry	798-G	410
G	I. C. R. R	2500	E-1351	V	C., T. H. & S. E. Ry	798-H	478
H	I. C. R. R	2662	E-1422	W	C., M., St. P. & P. R. R.	15200-B	B-5133
I	I. C. R. R	2602	E-1378	X	So. Ind. Ry	798-H	656
J	I. C. R. R	2818	E-1435	Y	So. Ind. Ry	798-C	751
K	I. C. R. R	2817	E-1434	Z	C. & E. I. Ry	1200-F	2688
L	I. C. R. R	3100	E-1521	AA	C. & E. I. Ry	1200-G	2824
M	I. C. R. R	3100-A	E-1550	BB	C. & E. I. Ry	1200-H	3070
N	I. C. R. R	3100-C	E-1652	CC	C. & E. I. Ry	100	8
O	I. C. R. R	3100-F	E-1689	DD	C., M. & St. P. Ry	15200-A	B-4722

233 *Exhibit 3. I. & S. Docket 3843. Witness Averitt*

Coal from Indiana to Illinois—Comparison of distances to Rockford and Freeport, Illinois; Southern Illinois versus Clinton and Linton, Indiana, groups shown in exhibit no. 370, submitted by Witness Waffle, and exhibit no. 335, submitted by Witness Wildman, in docket 23130

Origin group	Rockford		Freeport		Average of Rockford-Freeport	
	A	B	A	B	A	B
Brazil-Clinton:						
Waffle	231.0	267.0	271.0	304.0	251.0	285.5
Wildman	226.5	270.9	258.6	304.0	242.6	287.5
Difference	4.5	3.9	12.4		8.4	2.0
Linton-Sullivan:						
Waffle	271.0	294.0	311.0	327.0	291.0	310.5
Wildman	271.1	296.7	307.0	331.6	289.1	314.2
Difference	.1	2.7	4.0	4.6	1.9	3.7
Southern Illinois:						
Waffle	327.0	368.0	337.0	369.0	332.0	368.5
Wildman	328.7	379.3	337.9	394.6	333.3	387.0
Difference	1.7	11.3	.9	25.6	1.3	18.5

A—Distance via short route.
B—Average distance from all mines in group.

234 *Statement showing distances to Rockford and Freeport, Ill., from Springfield, Ill., group taken from exhibit no. 335, submitted by Witness Wildman in docket no. 23130*

TO ROCKFORD, ILL.

Number of billing points	Origin line	Total miles	Average miles	Number of billing points	Origin line	Total miles	Average miles
20	Alton	4,252.0	212.6	1	I. T.	316.8	316.8
6	B. & O.	1,488.0	248.0	3	L. & M.	782.4	260.8
5	C. & E. I.	1,485.0	297.0	3	N. Y. C. & St. L.	739.5	246.5
5	C. & I. M.	1,122.0	224.4	2	Pennsylvania	459.0	229.5
5	C. & N. W.	1,111.0	222.2	1	S. T.	201.2	201.2
6	C., B. & Q.	1,569.0	261.5	5	Wabash	1,247.0	249.4
1	C., S. & St. L.	233.4	233.4				
8	C., C., C. & St. L.	2,240.0	280.0	80		19,028.8	237.9
9	I. C.	1,782.5	[1] 198.1				

TO FREEPORT, ILL.

20	Alton	5,100.0	255.0	1	I. T.	289.1	289.1
6	B. & O.	1,656.0	276.0	3	L. & M.	810.0	270.0
5	C. & E. I.	1,299.0	259.8	3	N. Y. C. & St. L.	767.4	255.8
5	C. & I. M.	1,168.5	233.7	2	Pennsylvania	543.8	271.9
5	C. & N. W.	1,373.0	274.6	1	S. T.	210.5	210.5
6	C., B. & Q.	1,989.0	331.5	9	Wabash	2,820.6	313.4
1	C., S. & St. L.	261.4	261.4				
8	C., C., C. & St. L.	2,087.2	260.9	84		22,241.2	264.8
9	I. C.	1,865.7	[1] 207.3				

[1] Short rate-making line.

235 *Composite statement of distances to Rockford and Freeport, Illinois, from Clinton, Ind., Springfield, Ill., Linton, Ind., and southern Illinois groups*

TO ROCKFORD, ILLINOIS

	Clinton, Indiana	Springfield, Illinois	Linton, Indiana	Southern Illinois
Short route	226.5	198.1	271.0	327.0
Average	267.0	237.9	294.0	368.0

TO FREEPORT, ILLINOIS

Short route	258.6	207.3	307.0	337.0
Average	304.0	264.8	327.0	369.0

236 *Exhibit 4, I. & S. Dkt. 3843. Witness Averitt*

Coal from Indiana to Illinois—Comparison of distances over direct route of C., M. St. P. & P., from its Clinton and Linton Mines with distances over routes in which C., M. St. P. & P. joins from central and southern Illinois

ROCKFORD

1	2	3	4	5	6	7
Item no.	Origin group	Initial carrier	Origin points	Total miles	Average	Tariff route
1	Brazil-Clinton	C., M. St. P. & P.	4	924	231	C., M. St. P. & P. direct.
2	Linton-Sullivan	C., M. St. P. & P.	7	1,925	275	C., M. St. P. & P. direct.
3	Central Illinois	Alton	20	5,160	258	Joliet—E. J. & E.—Aurora—C., M. St. P. & P.
		C. & E. I.	5	1,560	312	Momence—C., M. St. P. & P.
		C. & I. M.	9	2,070	230	Cimic—I. C.—Mendota—C., M. St. P. & P.
		C., B. & Q.	6	1,668	278	Mendota—C., M. St. P. & P.
		C., C. C. & St. L.	9	3,357	373	Danville—N. Y. C.—Chicago—C., M. St. P. & P.
		I. C.	9	1,791	199	Mendota—C., M. St. P. & P.
		L. & M.	3	783	261	Mt. Olive—I. C.—Mendota—C., M. St. P. & P.
		N. Y. C. & St. L.	3	741	247	Ramsey—I. C.—Mendota—C., M. St. P. & P.
		Penna.	1	335	335	Peoria—Alton—Granville—C., M. St. P. & P.
		S. T.	1	201	201	Springfield—I. C.—Mendota—C., M. St. P. & P.
		Wabash	9	2,475	275	Manhattan—C., M. St. P. & P.
		Total	75	20,141	269	
4	Southern Illinois	C. & E. I.	7	2,625	375	Momence—C., M. St. P. & P.
		C., B. & Q.	9	3,492	388	Mendota—C., M. St. P. & P.
		C., C. C. & St. L.	6	2,388	398	Danville—N. Y. C.—Momence—C., M. St. P. & P.
		I. C.	19	6,213	327	Mendota—C., M. St. P. & P.
		Mo. Pac.	13	5,343	411	Benton—C. & E. I.—Chicago—C., M. St. P. & P.
		Mo. Pac.	6	2,070	345	Marion—I. C.—Mendota—C., M. St. St. P. & P.
		Total	60	22,131	369	

Coal from Indiana to Illinois—Comparison of distances over direct route of C., M. St. P. & P. from its Clinton and Linton mines, with distances over routes in which C., M. St. P. & P., joins from central and southern Illinois—Continued

FREEPORT

1	2	3	4	5	6	7
Item no.	Origin group	Initial carrier	Origin points	Total miles	Average	Tariff route
5	Brazil-Clinton	C., M. St. P. & P.	4	1,084	271	C., M. St. P. & P., direct.
6	Linton-Sullivan	C., M. St. P. & P.	7	2,205	315	C., M. St. P. & P., direct.
7	Central Illinois	Alton	20	5,940	297	Joliet—E. J. & E.—Spaulding—C., M. St. P. & P.
		C. & E. I.	5	1,695	339	Momence—C., M. St. P. & P.
		C. & I. M.	9	2,457	273	Cimic—I. C.—Mendota—C., M. St. P. & P.
		C. B. & Q.	6	1,926	321	Mendota—C., M. St. P. & P.
		C., C. C. & St. L.	9	3,717	413	Danville—N. Y. C.—Chicago—C., M. St. P. & P.
		I. C.	9	2,178	242	Mendota—C., M. St. P. & P.
		L. & M.	3	912	304	Mt. Olive—I. C.—Mendota—C., M. St. P. & P.
		N. Y. C. & St. L.	3	870	290	Ramsey—I. C.—Mendota—C., M. St. P. & P.
		Penna.	1	339	339	Peoria—Alton—Granville—C., M. St. P. & P.
		S. T.	1	244	244	Springfield—I. C.—Mendota—C., M. St. P. & P.
		Wabash	9	2,853	317	Manhattan—C., M. St. P. & P.
		Total	75	23,131	309	
8	Southern Illinois	C. & E. I.	7	2,919	417	Momence—C., M. St. & P. P.
		C. B. & Q.	9	3,879	431	Mendota—C., M. St. P. & P.
		C. C. C. & St. L.	6	2,694	449	Danville—N. Y. C.—Chicago—C., M. St. P. & P.
		I. C.	19	7,030	370	Mendota—C., M. St. P. & P.
		Mo. Pac.	14	6,986	499	E. St. Louis—Alton—Joliet—E. J. & E.—Spaulding—C., M. St. P. & P.
		Mo. Pac.	6	3,066	511	E. St. Louis—Alton—Joliet—E. J. & E.—Spaulding—C., M. St. P. & P.
		Total	61	26,574	436	

COMPOSITE—ROCKFORD AND FREEPORT

9	Brazil-Clinton	Items 1-5	8	2,008	251	
10	Linton-Sullivan	Items 2-6	14	4,130	295	
11	Central Illinois	Items 3-7	150	43,272	288	
12	Southern Illinois	Items 4-8	121	48,705	403	

238 *Exhibit 6. I. & S. Docket 3843*

Coal from Indiana to Illinois—Statement showing distances and rates from Clinton, Linton, Ind.; southern Illinois; and western Kentucky group mines to Rockford, Ill., via lines serving both origin groups and destination

[Rates in cents per ton]

To Rockford, Ill., from—	Number of billing points	Route	Total miles	Av. miles	Rate	Percent of H. & H.[1] scale	I. C. C. 23922[2] scale
Clinton group	4	C., M., St. P. & P.	924	231	[3]170	69	199
					187	75	
Linton group	7	C., M., St. P. & P.	1,925	275	[3]175	65	207
					192	70	
Springfield group	6	C., B. & Q.	1,692	282	170	61	215
	9	I. C.	2,123	236	170	69	199
Southern Illinois group	18	C., B. & Q.	7,254	403	200	56	255
	25	I. C.	9,130	365	200	61	239
Western Kentucky group	38	I. C.	19,160	504	235	58	287

[1] Holmes & Hallowell, 69 I. C. C. 11.
[2] I. C. C. 23922 (sub. 2) mimeographed.
[3] Rate under suspension.

239 *Exhibit 7. Waffle*

240 *Exhibit 8, Waffle*

Statement of average distances via Short Tariff Routes from Brazil-Clinton, Linton-Sullivan, and southern Illinois to points shown herein

ROCKFORD

1	2	3	4	5	6	7
Origin group	Initial carrier	Total billing points	Total miles	Average	Rate	Short tariff routes
Brazil-Clinton	B. & O.	3	741	247	187	West Dana, C., M., St. P. & P.
	C. & E. I.	5	1,205	241	187	Momence, C., M., St. P. & P.
	C., M., St. P. & P.	4	924	231	187	C., M., St. P. & P. direct.
	C., C., C. & St. L.	4	1,068	267	187	Danville, N. Y. C.; Momence, C., M., St. P. & P.
	Penna.	7	2,324	332	187	Chicago, I. C.
	Total	23	6,262	272	------	
Linton-Sullivan	C. & E. I.	13	3,523	271	192	Momence, C., M., St. P. & P.
	C., I. & L.	4	1,276	319	192	Shelby, N. Y. C.; Momence, C., M., St. P. & P.
	C., M., St. P. & P.	7	1,925	275	192	C., M., St. P. & P. direct.
	C., C., C. & St. L.	5	1,445	289	192	Danville, N. Y. C.; Momence, C., M., St. P. & P.
	I. C.	6	1,848	308	192	Mendota, C., M., St. P. & P.
	Penna.	5	1,920	384	192	Chicago, I. C.
	Total	40	11,937	298	------	
Southern Illinois	C. & E. I.	7	2,625	375	200	Momence, C., M., St. P. & P.
	C., B. & Q.	9	3,492	388	200	Mendota, C., M., St. P. & P.
	C., C., C. & St. L.	6	2,352	392	200	Danville, N. Y. C.; Gibson, I. H. B.; Proviso, C. & N. W.
	I. C.	19	6,213	327	200	Mendota, C., M., St. P. & P.
	Mo. Pac.	21	8,291	395	200	(1).
	Total	62	22,973	371	------	

[1] Group 1 via Benton, C. & E. I.; Chicago, C., M., St. P. & P. Group 16 via East St. Louis, L. & M.; Benld, C. & N. W. Group 17 via Marion, I. C.; Mendota, C., M., St. P. & P.

Statement of average distances via Short Tariff Routes from Brazil-Clinton, Linton-Sullivan, and southern Illinois to points shown herein—Continued

FREEPORT

1	2	3	4	5	6	7
Origin group	Initial carrier	Total billing points	Total miles	Average	Rate	Short tariff routes
Brazil-Clinton	B. & O.	3	858	286	187	Decatur, I. C.
	C. & E. I.	5	1,365	273	187	Hawthorne, I. C.
	C., M., St. P. & P.	4	1,040	260	187	Delmar, C., M. & G.; De Kalb, C. & N. W.
	C., C., C. & St. L.	4	1,224	306	187	Danville, N. Y. C.; Chicago, C. & N. W.
	Penna.	7	2,513	359	187	Chicago, I. C.
	Total	23	7,000	304	------	
Linton-Sullivan	C. & E. I.	13	3,939	303	192	Hawthorne, I. C.
	C., I. & L.	4	1,396	349	192	Hammond, I. H. B.; Proviso, C. & N. W.
	C., M., St. P. & P.	7	2,128	304	192	Delmar, C., M. & G.; De Kalb, C. & N. W.
	C., C., C. & St. L.	5	1,645	329	192	Danville, N. Y. C.; Chicago, C. & N. W.
	I. C.	6	1,908	318	192	I. C. direct.
	Penna.	5	2,055	411	192	Chicago, I. C.
	Total	40	13,071	327	------	
Southern Illinois	C. & E. I.	7	2,366	338	200	Sullivan, I. C.
	C., B. & Q.	9	3,879	431	200	Mendota, C., M., St. P. & P.
	C., C., C. & St. L.	6	2,460	410	200	Bloomington, I. C.
	I. C.	19	6,403	337	200	I. C. direct.
	Mo. Pac.	22	9,596	436	200	(1).
	Total	63	24,704	392	------	

FORRESTON

Brazil-Clinton	B. & O.	3	786	262	180	West Dana, C., M., St. P. & P.
	C. & E. I.	5	1,250	250	180	Momence, C., M., St. P. & P.
	C., M., St. P. & P.	4	984	246	180	Delmar, C., M. & G.; Kirkland, C., M., St. P. & P.
	C., C., C. & St. L.	4	1,208	302	180	Danville, N. Y. C.; Hartsdale, E., J. & E.; Wayne, C., A. & E.; Elgin, C., M., St. P. & P.
	Penna.	7	2,464	352	187	Logansport, Penna.; Chicago, C., M., St. P. & P.
	Total	23	6,692	291	------	
Linton-Sullivan	C. & E. I.	13	3,640	280	185	Momence, C., M., St. P. & P.
	C., I. & L.	4	1,364	341	192	Chicago, C., M., St. P. & P.
	C., M., St. P. & P.	7	2,030	290	185	Delmar, C., M. & G.; Kirkland, C., M., St. P. & P.
	C., C., C. & St. L.	5	1,575	315	185	Danville, N. Y. C.; Chicago, C., M., St. P. & P.
	I. C.	6	1,938	323	192	Mendota, C., M., St. P. & P.
	Penna.	5	2,020	404	192	Logansport, Penna; Chicago, C., M., St. P. & P.
	Total	40	12,567	314	------	
Southern Illinois	C. & E. I.	7	2,688	384	200	Momence, C., M., St. P. & P.
	C., B. & Q.	9	3,627	403	200	Mendota, C., M., St. P. & P.
	C., C., C. & St. L.	6	2,544	424	200	Danville, N. Y. C.; Chicago, C., M., St. P. & P.
	I. C.	19	6,498	342	200	Mendota, C., M., St. P. & P.
	Mo. Pac.	20	8,754	438	200	(2).
	Total	61	24,111	395	------	

(1) Group 1 via East St. Louis, L. & M.; Benld, C. & N. W. Group 10 via Valley Junction, I. C. Group 17 via Marion, I. C.

(2) Group 1 via East St. Louis, Alton, Joliet, E. J. & E.; Spaulding, C., M., St. P. & P. Group 17 via Marion, I. C.; Mendota, C., M., St. P. & P.

Statement of average distances via Short Tariff Routes from Brazil-Clinton, Linton-Sullivan, and southern Illinois to points shown herein—Continued

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BYRON

1	2	3	4	5	6	7
Origin group	Initial carrier	Total billing points	Total miles	Average	Rate	Short tariff routes
Brazil-Clinton	B. & O.	3	732	244	180	West Dana, C., M., St. & P.
	C. & E. I.	5	1,160	232	180	Momence, C., M., St. P. & P.
	C., M., St. P. & P.	4	912	228	180	Delmar, C. M. & G; Kirkland, C., M., St. P. & P.
	C., C., C. & St. L.	4	1,096	274	180	Danville, N. Y. C.; Chicago, C., M., St. P. & P.
	Penna.	7	2,338	334	187	Logansport, Penna; Chicago, C., C., St. P. & P.
	Total	23	6,238	271		
Linton-Sullivan	C. & E. I.	13	3,406	262	185	Momence, C., M., St. P. & P.
	C., I. & L.	4	1,292	323	192	Chicago, C., M., St. P. & P.
	C., M., St. P. & P.	7	1,904	272	185	Delmar, C., M. & G.; Kirkland, C., M., St. P. & P.
	C., C., C. & St. L.	5	1,485	297	185	Danville, N. Y. C.; Chicago, C. M., St. P. & P.
	I. C.	6	1,830	305	185	Mendota, C., M., St. P. & P.
	Penna.	5	1,930	386	192	Logansport, Penna.; Chicago, C., M., St. P. & P.
	Total	40	11,847	296		
Southern Illinois	C. & E. I.	7	2,562	366	200	Momence, C., M., St. P. & P.
	C., B. & Q.	9	3,465	385	200	Mendota, C., M., St. P. & P.
	C., C., C. & St. P.	6	2,436	406	200	Danville, N. Y. C.; Chicago, C., M., St. P. & P.
	I. C.	19	6,156	324	200	Mendota, C., M., St. P. & P.
	Mo. Pac.	20	8,394	420	200	(1).
	Total	61	23,013	377		

DAVIS JUNCTION

Brazil-Clinton	B. & O.	3	705	235	180	West Dana, C., M., St. P. & P.
	C. & E. I.	5	1,115	223	180	Momence, C., M., St. P. & P.
	C., M., St. P. & P.	4	876	219	180	Delmar, C., M. & G.; Kirkland, C., M., St. P. & P.
	C., C., C. & St. L.	4	1,060	265	180	Danville, N. Y. C.; Chicago, C., M., St. P. & P.
	Penna.	7	2,275	325	187	Logansport, Penna.; Chicago, C., M., St. P. & P.
	Total	23	6,031	262		
Linton-Sullivan	C. & E. I.	13	3,289	253	185	Momence, C., M., St. P. & P.
	C., I. & L.	4	1,256	314	192	Chicago, C., M., St. P. & P.
	C., M., St. P. & P.	7	1,841	263	185	Delmar, C., M. & G.; Kirkland, C., M., St. P. & P.
	C., C., C. & St. L.	5	1,440	288	185	Danville, N. Y. C.; Chicago, C., M., St. P. & P.
	I. C.	6	1,776	296	185	Mendota, C., M., St. P. & P.
	Penna.	5	1,885	377	192	Logansport, Penna; Chicago, C., M., St. P. & P.
	Total	40	11,487	287		
Southern-Illinois	C. & E. I.	7	2,499	357	200	Momence, C., M., St. P. & P.
	C., B. & Q.	9	3,384	376	200	Mendota, C., M., St. P. & P.
	C., C., C. & St. L.	6	2,382	397	200	Danville, N. Y. C.; Chicago, C., M., St. P. & P.
	I. C.	19	5,985	315	200	Mendota, C., M., St. P. & P.
	Mo. Pac.	20	8,214	411	200	(1).
	Total	61	22,464	368		

(1) Group 1 via East St. Louis, Alton, Joliet, E. J. & E.; Spaulding, C., M., St. P. & P. Group 17 via Marion, I. C.; Mendota, C., M., St. P. & P.

Statement of average distances via Short Tariff Routes from Brazil-Clinton, Linton-Sullivan, and southern Illinois to points shown herein—Continued

KIRKLAND

1	2	3	4	5	6	7
Origin group	Initial carrier	Total billing points	Total miles	Average	Rate	Short tariff routes
Brazil-Clinton	B. & O.	3	666	222	180	West-Dana, C., M., St. P. & P.
	C. & E. I.	5	1,050	210	180	Momence, C., M., St. P. & P.
	C., M., St. P. & P.	4	824	206	180	Delmar, C., M. & G.; Kirkland, C., M., St. P. & P.
	C., C., C. & St. L.	4	968	242	180	Danville, N. Y. C.; Momence, C., M., St. P. & P.
	Penna.	7	2,184	312	180	Logansport, Penna.; Chicago, C., M., St. P. & P.
	Total	23	5,692	247	-----	
Linton-Sullivan	C. & E. I.	13	3,120	240	185	Momence, C., M., St. P. & P.
	C., I. & L.	4	1,204	301	192	Chicago, C., M., St. P. & P.
	C., M., St. P. & P.	7	1,750	250	185	Delmar, C., M. & G.; Kirkland, C., M., St. P. & P.
	C., C., C. & St. L.	5	1,320	264	185	Danville, N. Y. C.; Momence, C. M., St. P. & P.
	I. C.	6	1,698	283	185	Mendota, C., M., St. P. & P.
	Penna.	5	1,820	364	185	Logansport, Penna; Chicago, C., M., St. P. & P.
	Total	40	10,912	273	-----	
Southern-Illinois	C. & E. I.	7	2,408	344	210	Momence, C., M., St. P. & P.
	C., B. & Q.	9	3,267	363	210	Mendota, C., M., St. P. & P.
	C., C., C. & St. L.	6	2,010	335	210	Danville, N. Y. C.; Momence, C., M., St. P. & P.
	I. C.	19	5,738	302	210	Mendota, C., M., St. P. & P.
	Mo. Pac.	20	7,954	398	210	(1).
	Total	61	21,377	350	-----	

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GENOA

Brazil-Clinton	B. & O.	3	684	228	180	West Dana., C., M., St. P. & P.
	C. & E. I.	5	1,120	224	180	Momence, C., M., St. P. & P.
	C., M., St. P. & P.	4	844	211	180	Faithorn and Bensenville, C., M., St. P. & P.
	C., C., C. & St. L.	4	976	244	180	Danville, N. Y. C.; Chicago, C., M., St. P. & P.
	Penna.	7	2,128	304	180	Logansport, Penna.; Chicago, C., M., St. P. & P.
	Total	23	5,752	250	-----	
Linton-Sullivan	C. & E. I.	13	3,302	254	185	Momence, C., M., St. P. & P.
	C., I. & L.	4	1,172	293	192	Chicago, C., M., St. P. & P.
	C., M., St. P. & P.	7	1,785	255	185	Faithorn and Bensenville, C., M. St. P. & P.
	C., C., C. & St. L.	5	1,335	267	185	Danville, N. Y. C.; Chicago, C., M., St. P. & P.
	I. C.	6	1,902	317	185	Mendota, C., M., St. P. & P.
	Penna.	5	1,780	356	185	Logansport, Penna.; Chicago, C., M., St. P. & P.
	Total	40	11,276	282	-----	
Southern Illinois	C. & E. I.	7	2,506	358	210	Momence, C., M., St. P. & P.
	C., B. & Q.	9	3,573	397	210	Mendota, C., M., St. P. & P.
	C., C., C. & St. L.	6	2,256	376	210	Danville, N. Y. C.; Chicago, C., M., St. P. & P.
	I. C.	19	6,384	336	210	Mendota, C., M., St. P. & P.
	Mo. Pac.	20	8,060	403	210	(1).
	Total	61	22,779	373	-----	

1 Group 1 via East St. Louis, Alton, Joliet, E. J. & E.; Spaulding, C., M., St. P. & P. Group 17 via Marion, I. C.; Mendota, C., M., St. P. & P

Statement of average distances via Short Tariff Routes from Brazil-Clinton, Linton-Sullivan, and southern Illinois to points shown herein—Continued

ELGIN

1	2	3	4	5	6	7
Origin group	Initial carrier	Total billing points	Total miles	Average	Rate	Short tariff routes
Brazil-Clinton	B. & O.	3	615	205	180	West Dana, C., M., St. P. & P.
	C. & E. I.	5	1,025	205	180	Momence, C., M., St. P. & P.
	C., M., St. P. & P.	4	752	188	180	Faithorn and Bensenville, C., M., St. P. & P.
	C., C., C. & St. L.	4	888	222	180	Danville, N. Y. C.; Chicago, C., M., St. P. & P.
	Penna.	7	1,974	282	180	Logansport, Penna.; Chicago, C., M., St. P. & P.
	Total	23	5,254	228		
Linton-Sullivan	C. & E. I.	13	3,055	235	185	Momence, C., M., St. P. & P.
	C., I. & L.	4	1,084	271	185	Chicago, C., M., St. P. & P.
	C., M., St. P. & P.	7	1,624	232	185	Faithorn and Bensenville, C., M., St. P. & P.
	C., C., C. & St. L.	5	1,225	245	185	Danville, N. Y. C.; Chicago, C., M., St. P. & P.
	I. C.	6	2,040	340	185	Mendota, C., M., St. P. & P.
	Penna.	5	1,670	334	185	Logansport, Penna.; Chicago, C., M., St. P. & P.
	Total	40	10,698	267		
Southern Illinois	C. & E. I.	7	2,373	339	210	Momence, C., M., St. P. & P.
	C., B. & Q.	9	3,663	407	210	Aurora, C. & N. W.
	C., C., C. & St. L.	6	2,124	354	210	Danville, N. Y. C.; Chicago, C. M., St. P. & P.
	I. C.	19	6,821	359	210	Mendota, C., M., St. P. & P.
	Mo. Pac.	23	9,172	399	210	(4).
	Total	64	24,153	377		

BENSENVILLE

Brazil-Clinton	B. & O.	3	558	186	180	West Dana, C., M., St. P. & P.
	C. & E. I.	5	935	187	180	Chicago, C., M., St. P. & P.
	C., M., St. P. & P.	4	676	169	180	Faithorn and Bensenville, C., M., St. P. & P.
	C., C., C. & St. L.	4	808	202	180	Danville, N. Y. C.; Chicago, C., M., St. P. & P.
	Penna.	7	1,834	262	180	Logansport, Penna.; Chicago, C., M., St. P. & P.
	Total	23	4,811	209		
Linton-Sullivan	C. & E. I.	13	2,821	217	185	Chicago, C., M., St. P. & P.
	C. I. & L.	4	1,004	251	185	Chicago, C., M., St. P. & P.
	C., M., St. P. & P.	7	1,491	213	185	Faithorn and Bensenville, C., M., St. P. & P.
	C., C., C. & St. L.	5	1,125	225	185	Danville, N. Y. C.; Chicago, C., M., St. P. & P.
	I. C.	6	1,692	282	185	Chicago, C., M., St. P. & P.
	Penna.	5	1,185	237	185	Beehunter, C., M., St. P. & P.
	Total	40	9,318	233		
Southern Illinois	C. & E. I.	7	2,247	321	210	Chicago, C., M., St. P. & P.
	C., B. & Q.	9	3,906	434	210	Chicago, C., M., St. P. & P.
	C., C., C. & St. L.	6	2,004	334	210	Danville, N. Y. C.; Chicago, C., M., St. P. & P.
	I. C.	19	6,289	331	210	Chicago, C., M., St. P. & P.
	Mo. Pac.	20	7,876	394	210	(3).
	Total	61	22,322	366		

[4] Group 1 via East St. Louis, Alton, Joliet, E. J. & E.; Spaulding, C., M., St. P. & P. Group 10 via East St. Louis, L. & M.; Benld, C. & N. W. Group 17 via Marion, I. C.; Mendota, C., M., St. P. & P.
[3] Group 1 via East St. Louis, Alton, Joliet, E. J. & E.; Spaulding, C., M., St. P. & P. Group 17 via Marion I. C.; Chicago, C., M., St. P. & P.

Statement of average distances via Short Tariff Routes from Brazil-Clinton, Linton-Sullivan, and southern Illinois to points shown herein—Continued

243 DE KALB

1	2	3	4	5	6	7
Origin group	Initial carrier	Total billing points	Total miles	Average	Rate	Short tariff routes
Brazil-Clinton	B. & O.	3	630	210	174	West Dana, C., M., St. P. & P.
	C. & E. I.	5	1,020	204	174	Momence, C., M., St. P. & P.
	C., M., St. P. & P.	4	776	194	174	C., M., St. P. & P. direct.
	C., C., C. & St. L.	4	920	230	174	Danville, N. Y. C.; Momence, C., M., St. P. & P.
	Penna	7	2,121	303	174	Chicago, C. & N. W.
	Total	23	5,467	238	-----	
Linton-Sullivan	C. & E. I.	13	3,042	234	179	Momence, C., M., St. P. & P.
	C. I. & L.	4	1,168	292	179	Chicago, C. & N. W.
	C., M., St. P. & P.	7	1,666	238	179	C., M., St. P. & P. direct.
	C., C., C. & St. L.	5	1,260	252	179	Danville, N. Y. C.; Momence, C., M., St. P. & P.
	I. C	6	1,938	323	179	Matteson, E. J. & E.; Ingalton, C. G. W.
	Penna	5	1,775	355	179	Chicago, C. & N. W.
	Total	40	10,849	271	-----	
Southern Illinois	C. & E. I.	7	2,366	338	190	Momence, C., M., St. P. & P.
	C., B. & Q.	9	3,024	336	190	Virden, C. & N. W.
	C., C., C. & St. L.	6	1,938	323	190	Danville, N. Y. C.; Momence, C., M., St. P. & P.
	I. C	19	6,783	357	190	Matteson, E. J. & E.; Aurora, C., M., St. P. & P.
	Mo. Pac.	23	8,869	384	190	(9).
	Total	64	22,980	359	-----	

9 Group 1 via East St. Louis, L. & M.; Benld, C. & N. W. Group 10 via East St. Louis, L. & M.; Benld, C. & N. W. Group 17 via Marion, C. & E. I.; Momence, C., M., St. P. & P.

244 *Exhibit 9, Waffle*

Statement of average distances via Short Tariff Routes from central Illinois to points shown herein

ROCKFORD

1	2	3	4	5	6
Initial carrier	Total billing points	Total miles	Average	Rate	Route
Alton	20	4,900	245	170	Peoria, C. & N. W.
B. & O.	5	1,230	246	170	Bando, C. & N. W.
C. & E. I.	5	1,490	298	170	Hawthorne, I. C.
C. & I. M.	9	2,070	230	170	Cimic, I. C.; Mendota, C., M., St. P. & P.
C. & N. W.	14	3,262	233	170	C. & N. W., direct.
C., B. & Q.	6	1,668	278	170	Mendota, C., M., St. P. & P.
C., S. & St. L.	2	472	236	170	Springfield, I. C.
C., C., C. & St. L.	8	2,280	285	170	Pana, I. C.
I. C.	9	1,791	199	170	Mendota, C., M., St. P. & P.
Ill. Term.	6	1,656	276	170	Peoria, C. & N. W.
L. & M.	3	783	261	170	Mt. Olive, I. C.; Mendota, C., M. St. P. & P.
N. Y. C. & St. L.	3	741	247	170	Ramsey, I. C.; Mendota, C., M., St. P. & P.
Penna.	1	252	252	170	Peoria, C. & N. W.
S. T.	1	201	201	170	Springfield, I. C., Mendota, C., M., St. P. & P.
Wabash	8	2,048	256	170	Decatur, I. C.
Total	100	24,544	245	-----	

Statement of average distances via Short Tariff Routes from central Illinois to points shown herein—Continued

FREEPORT

1	2	3	4	5	6
Initial carrier	Total billing points	Total miles	Average	Rate	Route
Alton	20	5,460	273	170	Peoria, C. & N. W.
B. & O	5	1,375	275	170	Bando, C. & N. W.
C. & E. I	5	1,490	326	170	Hawthorne, I. C.
C. & I. M	9	2,160	240	170	Cimic, I. C.
C. & N. W	14	3,654	261	170	C. & N. W., direct.
C., B. & Q	6	1,926	321	170	Mendota, C., M., St. P. & P.
C., S. & St. L	2	418	209	170	Springfield, I. C.
C., C., C. & St. L	8	2,056	257	170	Pana, I. C.
I. C	9	1,872	208	170	I. C., direct.
Ill. Term	6	1,824	304	170	Peoria, C. & N. W.
L. & M	3	810	270	170	Mt. Olive, I. C.
N. Y. C. & St. L	3	768	256	170	Ramsey, I. C.
Penna	1	280	280	170	Peoria, C. & N. W.
S. T	1	211	211	170	Springfield, I. C.
Wabash	8	1,824	228	170	Decatur, I. C.
Total	100	26,128	261	------	

FORRESTON

Alton	20	5,400	270	170	Joliet, E. J. & E.; Spaulding, C., M., St. P. & P.
B. & O	4	1,132	283	170	Springfield-Alton-Joliet, E. J. & E.; Spaulding, C., M., St. P. & P.
C. & E. I	5	1,560	312	170	Momence, C., M., St. P. & P.
C. & I. M	9	2,214	246	170	Cimic, I. C.; Mendota, C., M., St. P. & P.
C. & N. W					
C., B. & Q	6	1,764	294	170	Mendota, C., M., St. P. & P.
C. S. & St. L	2	568	284	170	Springfield-Wabash-Manhattan, C., M., St. P. & P.
C., C., C. & St. L	9	3,483	387	170	Danville, N. Y. C.; Chicago, C., M., St. P. & P.
I. C	9	1,935	215	170	Mendota, C., M., St. P. & P.
Ill. Term					
L. & M	3	831	277	170	Mt. Olive, I. C.; Mendota, C., M., St. P. & P.
N. Y. C. & St. L	3	921	307	170	Neoga, I. C.; Mendota, C., M., St. P. & P.
Penna	1	355	355	170	Peoria-Alton-Granville, C., M., St. P. & P.
S. T	1	217	217	170	Springfield, I. C.; Mendota, C., M., St. P. & P.
Wabash	9	2,610	290	170	Manhattan, C., M., St. P. & P.
Total	81	22,990	284	------	

245

BYRON

1	2	3	4	5	6
Initial carrier	Total billing points	Total miles	Average	Rate	Route
Alton	20	5,040	252	170	Joliet, E. J. & E.; Spaulding, C., M., St. P. & P.
B. & O	4	1,060	265	170	Springfield-Alton-Joliet, E. J. & E.; Spaulding, C., M., St. P. & P.
C. & E. I	5	1,450	294	170	Momence, C., M., St. P. & P.
C. & I. M	9	2,052	228	170	Cimic, I. C.; Mendota, C., M., St. P. & P.
C. & N. W					
C., B. & Q	6	1,656	276	170	Mendota, C., M., St. P. & P.
C. S. & St. L	2	532	266	170	Springfield-Wabash-Manhattan, C., M., St. P. & P.
C., C., C. & St. L	9	3,321	369	170	Danville, N. Y. C.; Chicago, C., M., St. P. & P.
I. C	9	1,773	197	170	Mendota, C., M., St. P. & P.
Ill. Term					
L. & M	3	777	259	170	Mt. Olive, I. C.; Mendota, C., M., St. P. & P.
N. Y. C. & St. L	3	867	289	170	Neoga, I. C.; Mendota, C., M., St. P. & P.
Penna	1	335	335	170	Peoria-Alton-Granville, C., M., St. P. & P.
S. T	1	199	199	170	Springfield, I. C.; Mendota, C., M., St. P. & P.
Wabash	9	2,448	272	170	Manhattan, C., M., St. P. & P.
Total	81	21,510	266	------	

Statement of average distances via Short Tariff Routes from central Illinois to points shown herein—Continued

DAVIS JUNCTION

1	2	3	4	5	6
Initial carrier	Total billing points	Total miles	Average	Rate	Route
Alton	20	4,980	249	170	Granville, C., M., St. P. & P.
B. & O	4	1,152	288	170	Springfield-Alton-Granville, C., M., St. P. & P.
C. & E. I	5	1,425	285	170	Momence, C., M., St. P. & P.
C. & I. M	9	1,971	219	170	Cimic, I. C.; Mendota, C., M., St. P. & P.
C. & N. W					
C., B. & Q	6	1,602	267	170	Mendota, C., M., St. P. & P.
C. S. & St. L	2	514	257	170	Springfield-Wabash-Manhattan, C., M., St. P. & P.
C., C., C. & St. L	9	3,240	360	170	Danville, N. Y. C.; Chicago, C., M., St. P. & P.
I. C	9	1,692	188	170	Mendota, C., M., St. P. & P.
Ill. Term					
L. & M	3	750	250	170	Mt. Olive, I. C.; Mendota, C., M., St. P. & P.
N. Y. C. & St. L	3	840	280	170	Neoga, I. C.; Mendota, C., M., St. P. & P.
Penna	1	326	326	170	Peoria-Alton-Granville, C., M., St. P. & P.
S. T	1	190	190	170	Springfield, I. C.; Mendota, C., M., St. P. & P.
Wabash	9	2,367	263	170	Manhattan, C., M., St. P. & P.
Total	81	21,049	260	------	

KIRKLAND

Alton	20	4,600	230	170	Joliet, E. J. & E.; Spaulding, C., M., St. P. & P.
B. & O	4	972	243	170	Springfield-Alton-Joliet, E. J. & E.; Spaulding, C., M., St. P. & P.
C. & E. I	5	1,360	272	170	Momence, C., M., St. P. & P.
C. & I. M	9	1,854	206	170	Cimic, I. C.; Mendota, C., M., St. P. & P.
C. & N. W					
C., B. & Q	6	1,524	254	170	Mendota, C., M., St. P. & P.
C. S. & St. L	2	466	233	170	Springfield-Wabash-Manhattan, C., M., St. P. & P.
C., C. C. & St. L	9	3,123	347	170	Danville, N. Y. C.; Momence, C., M., St. P. & P.
I. C	9	1,575	175	170	Mendota, C., M., St. P. & P.
Ill. Term					
L. & M	3	711	237	170	Mt. Olive, I. C.; Mendota, C., M., St. P. & P.
N. Y. C. & St. L	3	801	267	170	Neoga, I. C.; Mendota, C., M., St. P. & P.
Penna	1	313	313	170	Peoria-Alton-Granville, C., M., St. P. & P.
S. T	1	177	177	170	Springfield, I. C.; Mendota, C., M., St. P. & P.
Wabash	9	2,250	250	170	Manhattan, C., M., St. P & P.
Total	81	19,726	244	------	

GENOA

Alton	20	4,460	223	170	Joliet, E. J. & E.; Spaulding, C., M., St. P & P.
B. & O	4	944	236	170	Springfield-Alton-Joliet, E. J. & E.; Spaulding, C., M., St. P. & P.
C. & E. I	5	1,400	280	170	Momence, C., M., St. P. & P.
C. & I. M	9	2,151	239	170	Cimic, I. C.; Mendota, C., M., St. P. & P.
C. & N. W					
C. B., & Q	6	1,722	287	170	Mendota, C., M., St. P. & P.
C. S., & St. L	2	500	250	170	Springfield-Wabash-Brisbane, E. J. & E.; Spaulding, C., M., St. P. & P.
C., C., C. & St. L	9	3,051	339	170	Danville, N. Y. C., Chicago. C., M., St. P. & P.
I. C	9	1,872	208	170	Mendota, C., M., St. P. & P.
Ill. Term					
L. & M	3	810	270	170	Mt. Olive, I. C.; Mendota, C., M., St. P. & P.
N. Y. C. & St. L	3	900	300	170	Neoga, I. C.; Mendota, C., M., St. P. & P.
Penna	1	344	344	170	Peoria-Alton-Granville, C., M., St. P. & P.
S. T	1	210	210	170	Springfield, I. C.; Mendota, C., M., St. P. & P.
Wabash	9	2,313	257	170	Brisbane, E. J. & E.; Spaulding, C., M., St. P. & P.
Total	81	20,677	255	------	

Statement of average distances via Short Tariff Routes from central Illinois to points shown herein—Continued

[246]

ELGIN

1	2	3	4	5	6
Initial carrier	Total billing points	Total miles	Average	Rate	Route
Alton	20	4,000	200	170	Joliet, E. J. & E.; Spaulding, C. M. St. P. & P.
B. & O	4	860	215	170	Springfield-Alton-Joliet, E. J. & E.; Spaulding, C. M. St. P. & P.
C. & E. I	5	1,305	261	170	Momence, C. M. St. P. & P.
C. & I. M	8	1,960	245	170	Taylorville-Wab.-Brisbane, E. J. & E.; Spaulding, C. M. St. P. & P.
C. & N. W					
C. B. & Q	6	1,854	309	170	Mendota, C. M. St. P. & P.
C. S. & St. L	2	456	228	170	Springfield-Wabash Brisbane, E. J. & E.; Spaulding, C. M. St. P. & P.
C. C. C. & St. L	9	2,853	317	170	Danville-N. Y. C.-Chicago, C. M. St. P. & P.
I. C	9	2,079	231	170	Mendota, C. M. St. P. & P.
Ill. Term					
L. & M	3	879	293	170	Mt. Olive-I. C.-Mendota, C. M. St. P. & P.
N. Y. C. & St. L	3	969	323	170	Neoga-I. C.-Mendota, C. M. St. P. & P.
Penna	1	367	367	170	Peoria-Alton-Granville, C. M. St. P. & P.
S. T	1	192	192	170	Springfield-Alton-Joliet, E. J. & E.; Spaulding, C. M. St. P. & P.
Wabash	9	2,106	234	170	Brisbane, E. J. & E.; Spaulding, C. M. St. P. & P.
Total	80	19,880	249		

BENSENVILLE

Alton	20	4,240	212	170	Chicago, C. M. St. P. & P.
B. & O	4	900	225	170	Springfield-Alton-Chicago, C. M. St. P. & P.
C. & E. I	5	1,215	243	170	Chicago, C. M. St. P. & P.
C. & I. M	9	2,187	243	170	Cimic-I. C.-Chicago, C. M. St. P. & P.
C. & N. W					
C. B. & Q	6	1,944	324	170	Chicago, C. M. St. P. & P.
C. S. & St. L	2	416	208	170	Springfield-Wabash-Manhattan, C. M. St. P. & P.
C. C. C. & St. L	8	2,376	297	170	Danville-N. Y. C.-Chicago, C. M. St. P. & P.
I. C	9	1,908	212	170	Chicago, C. M. St. P. & P.
Ill. Term					
L. & M	3	822	274	170	Mt. Olive-I. C.-Chicago, C. M. St. P. & P.
N. Y. C. & St. L	3	792	264	170	Neoga-I. C.-Chicago, C. M. St. P. & P.
Penna	1	287	287	170	Peoria-Alton-Chicago, C. M. St. P. & P.
S. T	1	204	204	170	Springfield-Alton-Chicago, C. M. St. P. & P.
Wabash	9	2,124	236	170	Chicago, C. M. St. P. & P.
Total	80	19,415	243		

DE KALB

Alton	20	4,060	203	160	Peoria, C. & N. W.
B. & O	5	1,035	207	160	Bando, C. & N. W.
C. & E. I	5	1,300	260	160	Momence, C. M. St. P. & P.
C. & I. M	9	1,818	202	160	Barr, C. & N. W.
C. & N. W	14	2,688	192	160	C. & N. W. direct.
C. B. & Q	6	1,686	281	160	Sterling, C. & N. W.
C. S. & St. L	2	378	189	160	Springfield, C. & I. M.; Barr, C. & N. W.
C. C. C. & St. L	8	2,096	262	160	Gillespie, C. & N. W.
I. C	9	1,980	220	160	Peoria, C. & N. W.
Ill. Term	6	1,404	234	160	Peoria, C. & N. W.
L. & M	3	753	251	160	Behld., C. & N. W.
N. Y. C. & St. L	3	873	291	160	Neoga-I. C.-Matteson, E. J. & E.; Aurora, C. M. St. P. & P.
Penna	1	210	210	160	Peoria, C. & N. W.
S. T	1	193	193	160	Springfield, C. & I. M.-Barr., C. & N. W.
Wabash	9	2,142	238	160	Manhattan, C. M. St. P. & P.
Total	101	22,616	224		

Statement of average distances via Short Tariff Routes from central Illinois to points shown herein—Continued

RECAPITULATION

Item no.	Destination	Origin points	Total miles	Average
1	Rockford	100	24,544	245
	Freeport	100	26,128	261
	Average	200	50,672	253
2	Forreston	81	22,990	284
	Byron	81	21,510	266
	Davis Junction	81	21,049	260
	Average	243	65,549	270
3	Kirkland	81	19,726	244
	Genoa	81	20,667	255
	Elgin	80	19,880	249
	Bensenville	80	19,415	243
	Average	322	79,688	247
4	De Kalb	101	22,616	224
5	Average of items 1, 2	443	116,221	262
6	Average of items 1, 2, 3	765	195,909	256
7	Average of items 1, 2, 3, 4	866	218,525	252

Statement of composite average distances over short tariff routes from Brazil-Clinton, Linton-Sullivan, central and southern Illinois to Rockford, Freeport, and intermediate points

Item no.	1	2	3	4	5	6	7	8	9	10	11	12	13
	Destination	Brazil-Clinton			Linton-Sullivan			Central Illinois			Southern Illinois		
		Origin points	Total miles	Average	Origin points	Total miles	Average	Origin points	Total miles	Average	Origin points	Total miles	Average
1	Rockford	23	6,262	272	40	11,937	298	100	24,544	245	62	22,973	371
	Freeport	23	7,000	304	40	13,071	327	100	26,128	261	63	24,704	392
	Average	46	13,262	288	80	25,008	313	200	50,672	253	125	47,677	381
2	Forreston	23	6,692	291	40	12,567	314	81	22,990	284	61	24,111	395
	Byron	23	6,238	271	40	11,847	296	81	21,510	266	61	23,013	377
	Davis Junction	23	6,031	262	40	11,487	287	81	21,049	260	61	22,464	368
	Average	69	18,961	275	120	35,901	299	243	65,549	270	183	69,588	380
3	Kirkland	23	5,692	247	40	10,912	273	81	19,726	244	61	21,377	350
	Genoa	23	5,752	250	40	11,276	282	81	20,667	255	61	22,779	373
	Elgin	23	5,254	228	40	10,698	267	80	19,880	249	64	24,153	377
	Bensenville	23	4,811	209	40	9,318	233	80	19,415	243	61	22,322	366
	Average	92	21,509	234	160	42,204	264	322	79,688	247	247	90,631	367
4	De Kalb	23	5,467	238	40	10,849	271	101	22,616	224	64	22,980	359
5	Average of items 1, 2	115	32,223	280	200	60,909	305	443	116,221	262	308	117,265	381
6	Average of items 1, 2, 3, 4	230	59,199	257	400	113,962	285	866	218,525	252	619	230,886	373

Exhibit 11, Waffle

Scale prescribed on bituminous coal in docket no. 23922

Distances	Docket 23922 scale	Percents of docket 23922 scale																												
		99	98	97	96	95	94	93	92	91	90	89	88	87	86	85	84	83	82	81	80	79	78	77	76	75	74	73	72	71	70
10 miles and under	65	64	64	63	62	62	61	60	60	59	59	58	57	57	56	55	55	54	53	53	52	51	51	50	49	49	48	47	47	46	46
30 miles and over 10	77	76	75	75	74	73	72	72	71	70	69	69	68	67	66	65	65	64	63	62	62	61	60	59	59	58	57	56	55	55	54
40 miles and over 30	85	84	83	82	82	81	80	79	78	77	77	76	75	74	73	72	71	71	70	69	68	67	66	65	65	64	63	62	61	60	60
50 miles and over 40	92	91	90	89	88	87	86	86	85	84	83	82	81	80	79	78	77	76	75	75	74	73	72	71	70	69	68	67	66	65	64
60 miles and over 50	99	98	97	96	95	94	93	92	91	90	89	88	87	86	85	84	83	82	81	80	79	78	77	76	75	74	73	72	71	70	69
70 miles and over 60	106	105	104	103	102	101	100	99	98	96	95	94	93	92	91	90	89	88	87	86	85	84	83	82	81	80	78	77	76	75	74
80 miles and over 70	113	112	111	110	108	107	106	105	104	103	102	101	99	98	97	96	95	94	93	92	90	89	88	87	86	85	84	82	81	80	79
90 miles and over 80	120	119	118	116	115	114	113	112	110	109	108	107	106	104	103	102	101	100	98	97	96	95	94	92	91	90	89	88	86	85	84
100 miles and over 90	127	126	124	123	122	121	119	118	117	116	114	113	112	110	109	108	107	105	104	103	102	100	99	98	97	95	94	93	92	90	89
110 miles and over 100	133	132	130	129	128	126	125	124	122	121	120	118	117	116	114	113	112	110	109	108	106	105	104	102	101	100	98	97	96	94	93
120 miles and over 110	139	138	136	135	133	132	131	129	128	126	125	124	122	121	120	118	117	115	114	113	111	110	108	107	106	104	103	101	100	99	97
130 miles and over 120	145	144	142	141	139	138	136	135	133	132	131	129	128	126	125	123	122	120	119	117	116	115	113	112	110	109	107	106	104	103	102
140 miles and over 130	150	149	147	146	144	143	141	140	138	137	135	134	132	131	129	128	126	125	123	122	120	119	117	116	114	113	111	110	108	107	105
160 miles and over 140	160	158	157	155	154	152	150	149	147	146	144	142	141	139	138	136	134	133	131	130	128	126	125	123	122	120	118	117	115	114	112
180 miles and over 160	170	168	167	165	163	162	160	158	156	155	153	151	150	148	146	145	143	141	139	138	136	134	133	131	129	128	126	124	122	121	119
200 miles and over 180	180	178	176	175	173	171	169	167	166	164	162	160	158	157	155	153	151	149	148	146	144	142	140	139	137	135	133	131	130	128	126
225 miles and over 200	190	188	186	184	182	181	179	177	175	173	171	169	167	165	163	162	160	158	156	154	152	150	148	146	144	143	141	139	137	135	133
250 miles and over 225	199	197	195	193	191	189	187	185	183	181	179	177	175	173	171	169	167	165	163	161	159	157	155	153	151	149	147	145	143	141	139
275 miles and over 250	207	205	203	201	199	197	195	193	190	188	186	184	182	180	178	176	174	172	170	168	166	164	161	159	157	155	153	151	149	147	145
300 miles and over 275	215	213	211	209	206	204	202	200	198	196	194	191	189	187	185	183	181	178	176	174	172	170	168	166	163	161	159	157	155	153	151
SCALE EXTENDED AT 8 CENTS FOR EACH 25 MILES																															
325 miles and over 300	223	221	219	216	214	212	210	207	205	203	201	198	196	194	192	190	187	185	183	181	178	176	174	172	169	167	165	163	161	158	156
350 miles and over 325	231	229	226	224	222	219	217	215	213	210	208	206	203	201	199	196	194	192	189	187	185	182	180	178	176	173	171	169	166	164	162
375 miles and over 350	239	237	234	232	229	227	225	222	220	217	215	213	210	208	206	203	201	198	196	194	191	189	186	184	182	179	177	174	172	170	167
400 miles and over 375	247	245	242	240	237	235	232	230	227	225	222	220	217	214	212	210	207	205	203	200	198	195	193	190	188	185	183	180	178	175	173

Exhibit 12, Waffle

H. & H. scale of rates on bituminous coal (69 I. C. C. 11) and various percents thereof

| Distances | H. & H. scale | Percents of Holmes & Hallowell scale | | |

H. & H. scale of rates on bituminous coal (69 I. C. C. 11) and various percents thereof—Continued

Distances	H. & H. scale	Percents of Holmes & Holmes scale																																										
		99	98	97	96	95	94	93	92	91	90	89	88	87	86	85	84	83	82	81	80	79	78	77	76	75	74	73	72	71	70	69	68	67	66	65	64	63	62	61	60
380 miles and over 380	340	337	333	329	326	323	320	316	313	309	306	303	299	296	292	289	286	282	280	275	272	269	265	262	258	255	252	248	245	241	238	235	231	228	224	221	218	214	211	207	204
400 miles and over 390	346	343	339	336	332	329	325	322	318	315	311	308	304	301	298	294	291	287	284	280	277	273	270	266	263	260	256	253	249	246	242	239	235	232	229	225	221	218	215	211	208
425 miles and over 400	358	354	351	347	344	340	337	333	329	326	322	319	315	311	308	304	301	297	294	290	286	283	279	276	272	269	265	261	258	254	251	247	243	240	236	233	229	226	222	218	215
450 miles and over 425	371	367	364	360	356	352	349	345	341	338	334	330	326	323	319	315	312	308	304	301	297	293	290	286	282	278	275	271	267	263	260	256	252	249	245	241	237	233	230	226	223
475 miles and over 450	383	379	375	372	368	364	360	356	352	349	345	341	337	333	329	326	322	318	314	310	306	303	299	295	291	287	283	280	276	272	268	264	260	257	253	249	245	241	237	234	230
500 miles and over 475	395	391	387	383	379	375	371	367	363	359	356	352	348	344	340	336	332	328	324	320	316	312	308	304	300	296	292	288	284	280	277	273	269	265	261	257	253	249	245	241	237
525 miles and over 500	407	403	399	395	391	387	383	379	374	370	366	362	358	354	350	346	342	338	334	330	326	322	317	313	309	305	301	297	293	289	285	281	277	273	269	265	260	256	252	248	244
550 miles and over 525	419	415	411	406	402	398	394	390	385	381	377	373	369	365	360	356	352	348	344	339	335	331	327	323	318	314	310	306	302	297	293	289	285	281	277	272	268	264	260	256	251
575 miles and over 550	431	427	422	418	414	409	405	401	397	392	388	384	379	375	371	366	362	358	353	349	345	340	336	332	328	323	319	315	310	306	302	297	293	289	284	280	276	272	267	263	259
600 miles and over 575	443	439	434	430	425	421	416	412	408	403	399	394	390	385	381	377	372	368	363	359	354	350	346	341	337	332	328	323	319	315	310	306	301	297	292	288	284	279	275	270	266
625 miles and over 600	456	451	447	442	438	433	429	424	420	415	410	406	401	397	392	388	383	378	374	369	365	360	356	351	347	342	337	333	328	324	319	315	310	306	301	296	292	287	283	278	274
650 miles and over 625	468	463	459	454	449	445	440	435	431	426	421	417	412	407	402	398	393	388	384	379	374	370	365	360	356	351	346	342	337	332	328	323	318	314	309	304	300	295	290	285	281

Comparison of rates and distances from C., M., St. P. & P. mines in Brazil-Clinton and Linton-Sullivan districts with those from southern Illinois to Rockford, Freeport, and intermediate points

Item no.	Destination	Rates			Distances			Percent of 23922 scale extended			Percent of H. & H. scale			Indiana rates based on—				Average of—	
														Col. 10 percents		Col. 13 percents			
		Brazil-Clinton [1]	Linton-Sullivan [1]	Southern Illinois [2]	Brazil-Clinton [3]	Linton-Sullivan [3]	Southern Illinois [4]	Brazil-Clinton	Linton-Sullivan	Southern Illinois	Brazil-Clinton	Linton-Sullivan	Southern Illinois	Brazil-Clinton	Linton-Sullivan	Brazil-Clinton	Linton-Sullivan	Columns 14-16	Columns 15-17
1	Rockford	170	175	200	231	275	371	85	84	84	68	64	60	167	174	149	164	158	169
	Freeport	170	175	200	271	315	392	82	78	81	62	57	58	168	181	158	173	163	177
	Average	170	175	200	251	295	381	82	81	81	65	62	59	168	174	154	169	161	172
2	Forreston	170	175	200	246	290	395	85	81	81	67	63	58	161	174	148	162	155	168
	Byron	170	175	200	228	272	377	85	84	81	70	64	60	161	168	145	164	153	166
	Davis Junction	170	175	200	219	263	368	89	84	84	73	65	61	160	174	142	163	151	169
	Average	170	175	200	231	275	380	85	84	81	68	64	60	161	168	149	164	155	166
3	Kirkland	170	175	210	206	250	350	89	88	91	75	69	67	173	181	151	171	162	176
	Genoa	170	175	210	211	255	373	89	84	88	73	67	63	167	182	147	164	157	173
	Elgin	170	175	210	188	232	377	94	88	85	80	70	63	153	169	133	156	143	163
	Bensenville	170	175	210	169	213	366	100	92	88	86	75	64	150	167	126	149	138	158
	Average	170	175	210	194	237	367	94	88	88	77	70	64	158	175	140	159	149	167
4	De Kalb	170	175	190	194	238	359	94	88	79	77	70	59	142	157	129	146	136	152
5	Average of items 1–2	170	175	200	239	283	381	85	81	81	68	63	59	161	174	146	165	154	170
6	Average of items 1, 2, 3, 4	170	175	203	216	260	373	89	84	85	73	67	61	162	176	142	159	152	168

[1] Suspended rate.
[2] Present rate.
[3] Distance from C., M., St. P. & P. mines only via that line direct.
[4] Distance from entire group via short tariff routes.

Exhibit 14, Waffle

Comparison of rates and distances from C., M., St. P. & P. mines in Brazil-Clinton and Linton-Sullivan districts with those from central Illinois to Rockford, Freeport, and intermediate points

Item no.	Destination	Rates			Distances			Percent of 23922 scale extended			Percent of H. & H. scale			Indiana rates based on—				Average of—	
														Col. 10 percents		Col. 13 percents			
		Brazil-Clinton [1]	Linton-Sullivan [1]	Central Illinois [2]	Brazil-Clinton [3]	Linton-Sullivan [3]	Central Illinois [4]	Brazil-Clinton	Linton-Sullivan	Central Illinois	Brazil-Clinton	Linton-Sullivan	Central Illinois	Brazil-Clinton	Linton-Sullivan	Brazil-Clinton	Linton-Sullivan	Columns 14-16	Columns 15-17
1	Rockford	170	175	170	231	275	245	85	84	85	68	64	67	169	176	166	183	168	180
	Freeport	170	175	170	271	315	261	82	78	82	62	57	64	170	183	175	191	172	187
	Average	170	175	170	251	295	253	82	81	82	65	62	65	170	176	170	186	170	181
2	Forreston	170	175	170	246	290	284	85	81	79	67	63	61	157	170	156	170	157	170
	Byron	170	175	170	228	272	266	85	84	82	70	64	64	163	170	154	175	159	173
	Davis Junction	170	175	170	219	263	260	89	84	82	73	65	65	156	170	151	174	154	172
	Average	170	175	170	231	275	270	85	84	82	68	64	64	163	170	159	175	161	173
3	Kirkland	170	175	170	206	250	244	89	88	85	75	69	67	162	169	151	171	157	170
	Genoa	170	175	170	211	255	255	89	84	82	73	67	65	156	170	151	170	154	170
	Elgin	170	175	170	188	232	249	94	88	85	80	70	67	153	169	141	166	147	168
	Bensenville	170	175	170	169	213	243	100	92	85	86	75	67	143	162	132	156	139	159
	Average	170	175	170	194	237	247	94	88	85	77	70	67	153	169	147	166	150	168
4	De Kalb	170	175	160	194	238	224	94	88	84	77	70	66	151	167	145	164	148	166
5	Average of items 1-2	170	175	170	239	283	262	85	81	82	68	63	64	163	176	159	179	161	178
6	Average of items 1, 2, 3, 4	170	175	169	216	260	252	89	84	82	73	67	65	156	170	151	170	154	170

[1] Suspended rate.
[2] Present rate.
[3] Distance from mines on C., M., St. P. & P. via that line direct.
[4] Average distance from entire group via short tariff routes.

252 *Exhibit 15, Waffle*

Comparison of rates and distances over direct single-line routes from Brazil-Clinton, Linton-Sullivan, and southern Illinois to Rockford and Freeport

ROCKFORD

1	2	3	4	5	6	7
Item no.	Origin group	Initial carrier	Origin points	Total miles	Average	Tariff route
1	Brazil-Clinton	C., M., St. P. & P.	4	924	231	C., M., St. P. & P. direct.
2	Linton-Sullivan	C., M., St. P. & P.	7	1,925	275	C., M., St. P. & P. direct.
3	Southern Illinois	C., B. & Q.	9	3,627	403	C., B. & Q. direct.
		I. C.	19	6,935	365	I. C. direct.
	Total		28	10,562	377	

FREEPORT

4	Brazil-Clinton	C., M., St. P. & P.	4	1,084	271	C., M., St. P. & P. direct.
5	Linton-Sullivan	C., M., St. P. & P.	7	2,205	315	C., M., St. P. & P. direct.
6	Southern Illinois	I. C.	19	6,403	337	I. C. direct.

COMPOSITE—ROCKFORD AND FREEPORT

7	Brazil-Clinton	Items 1-4	8	2,008	251	
8	Linton-Sullivan	Items 2-5	14	4,130	295	
9	Southern Illinois	Items 3-6	47	16,965	361	

Comparison of southern Illinois and suspended Indiana rates

ROCKFORD

1	2	3	4	5	6	7	8	9
Item no.	Origin group	Rate	Distance	Percent 23922 scale extended	Percent H. & H. scale	Rates based on southern Illinois, percent of—		Average of columns 7-8
						23922 scale	H. & H. scale	
10	Brazil-Clinton	[1] 170	231	85	68	161	149	155
	Linton-Sullivan	[1] 175	275	84	64	168	164	166
	Southern Illinois	[2] 200	377	81	60	200	200	200

FREEPORT

11	Brazil-Clinton	[1] 170	271	82	63	178	175	177
	Linton-Sullivan	[1] 175	315	78	59	192	191	192
	Southern Illinois	[2] 200	337	86	64	200	200	200

COMPOSITE—ROCKFORD AND FREEPORT

12	Brazil-Clinton	[1] 170	251	82	65	174	159	167
	Linton-Sullivan	[1] 175	295	82	62	181	174	178
	Southern Illinois	[2] 200	361	84	61	200	200	200

[1] Suspended rate.
[2] Present rate.

253 *Exhibit 16, Waffle*

Comparison of rates and distances over direct single-line routes from Brazil-Clinton, Linton-Sullivan, and central Illinois to Rockford and Freeport

ROCKFORD

1	2	3	4	5	6	7
Item no.	Origin group	Initial carrier	Origin points	Total miles	Average	Tariff route
1	Brazil-Clinton	C., M., St. P. & P.	4	924	231	C., M., St. P. & P. direct.
2	Linton-Sullivan	C., M., St. P. & P.	7	1,925	275	C., M., St. P. & P. direct.
3	Central Illinois	C. & N. W.	14	3,262	233	C. & N. W. direct.
		C., B. & Q.	6	1,668	278	C., B. & Q. direct.
		I. C.	9	2,115	235	I. C. direct.
	Total		29	7,045	243	

FREEPORT

4	Brazil-Clinton	C., M., St. P. & P.	4	1,084	271	C., M., St. P. & P. direct.
5	Linton-Sullivan	C., M., St. P. & P.	7	2,205	315	C., M., St. P. & P. direct.
6	Central Illinois	C. & N. W.	14	3,654	261	C. & N. W. direct.
		I. C.	9	1,872	208	I. C. direct.
	Total		23	5,526	240	

COMPOSITE—ROCKFORD AND FREEPORT

7	Brazil-Clinton	Items 1–4	8	2,008	251
8	Linton-Sullivan	Items 2–5	14	4,130	295
9	Central Illinois	Items 3–6	52	12,571	242

Comparison of southern Illinois and suspended Indiana rates

ROCKFORD

1	2	3	4	5	6	7	8	9
Item no.	Origin group	Rate	Distance	Percent 23922 scale extended	Percent H. & H. scale	Rates based on southern Illinois, percent of—		Average of columns 7–8
						23922 scale	H. & H. scale	
10	Brazil-Clinton	[1] 170	231	85	68	169	166	168
	Linton-Sullivan	[1] 175	275	84	64	176	183	180
	Central Illinois	[2] 170	243	85	67	170	170	170

FREEPORT

11	Brazil-Clinton	[1] 170	271	82	62	176	186	181
	Linton-Sullivan	[1] 175	315	78	59	190	203	196
	Central Illinois	[2] 170	240	85	68	170	170	170

COMPOSITE—ROCKFORD AND FREEPORT

12	Brazil-Clinton	[1] 170	251	82	65	176	175	176
	Linton-Sullivan	[1] 175	295	82	62	183	192	187
	Central Illinois	[2] 170	242	85	67	170	170	170

[1] Suspended rate.
[2] Present rate.

254 *Exhibit 17, Waffle*

Comparison of rates and distances over short rate-making line routes from Brazil-Clinton, Linton-Sullivan, and southern Illinois to Rockford and Freeport

ROCKFORD

1	2	3	4	5	6	7
Item no.	Origin group	Initial carrier	Origin points	Total miles	Average	Tariff route
1	Brazil-Clinton	C., M., St. P. & P.	4	924	231	C., M., St. P. & P. direct.
2	Linton-Sullivan	C., M., St. P. & P.	7	1,925	275	C., M., St. P. & P. direct.
3	Southern Illinois	I. C.	19	6,213	327	Mendota-C., M., St. P. & P.
		FREEPORT				
4	Brazil-Clinton	C., M., St. P. & P.	4	1,040	260	De Kalb-C. & N. W.
5	Linton-Sullivan	C., M., St. P. & P.	7	2,128	304	De Kalb-C. & N. W.
6	Southern Illinois	I. C.	19	6,403	337	I. C. direct.
		COMPOSITE—ROCKFORD AND FREEPORT				
7	Brazil-Clinton	Items 1–4	8	1,964	246	
8	Linton-Sullivan	Items 2–5	14	4,053	289	
9	Southern Illinois	Items 3–6	38	12,616	332	

Comparison of southern Illinois and suspended Indiana rates

ROCKFORD

1	2	3	4	5	6	7	8	9
Item no.	Origin group	Rate	Distance	Percent 23922 scale extended	Percent H. & H. scale	Rates based on southern Illinois, percent of—		Average of columns 7–8
						23922 scale	H. & H. scale	
10	Brazil-Clinton	[1] 170	231	85	68	171	164	168
	Linton-Sullivan	[1] 175	275	84	64	178	180	179
	Southern Illinois	[2] 200	327	86	66	200	200	200
		FREEPORT						
11	Brazil-Clinton	[1] 170	260	82	65	178	167	173
	Linton-Sullivan	[1] 175	304	78	60	192	187	190
	Southern Illinois	[2] 200	337	86	64	200	200	200
		COMPOSITE—ROCKFORD AND FREEPORT						
12	Brazil-Clinton	[1] 170	246	85	67	173	163	668
	Linton-Sullivan	[1] 175	290	81	63	187	179	183
	Southern Illinois	[2] 200	332	87	64	200	200	200

[1] Suspended rate.
[2] Present rate.

Exhibit 18, Waffle

Comparison of rates and distances over short tariff routes from Brazil-Clinton, Linton-Sullivan, and Southern Illinois to Rockford, Freeport, and intermediate points

Item no.	Destination	Rates			Distances			Percent of 23922 scale extended			Percent of H. & H. scale			Indiana rates based on—				Average of—	
														Col. 10 percents		Col. 13 percents			
		Brazil-Clinton [1]	Linton-Sullivan [1]	Southern Illinois [2]	Brazil-Clinton	Linton-Sullivan	Southern Illinois	Brazil-Clinton	Linton-Sullivan	Southern Illinois	Brazil-Clinton	Linton-Sullivan	Southern Illinois	Brazil-Clinton	Linton-Sullivan	Brazil-Clinton	Linton-Sullivan	Columns 14-16	Columns 15-17
		2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
1	Rockford	170	175	200	272	298	371	82	81	84	62	61	60	174	181	164	172	169	177
	Freeport	170	175	200	304	327	392	76	76	81	58	58	58	181	187	169	176	175	182
	Average	170	175	200	288	313	381	79	78	81	61	59	59	174	181	162	176	168	179
2	Forreston	170	175	200	291	314	395	79	78	81	59	59	58	174	181	166	173	170	177
	Byron	170	175	200	271	296	377	82	81	81	62	61	60	166	174	164	172	166	173
	Davis Junction	170	175	200	262	287	368	82	81	84	64	63	61	174	181	163	170	169	176
	Average	170	175	200	275	299	380	82	81	81	62	61	60	168	174	164	172	166	173
3	Kirkland	170	175	210	247	273	350	85	85	91	67	64	67	181	188	171	183	176	186
	Genoa	170	175	210	250	282	373	85	81	88	67	63	63	175	189	161	176	168	182
	Elgin	170	175	210	228	267	377	85	85	85	71	66	63	169	176	152	168	161	172
	Bensenville	170	175	210	209	233	366	89	88	88	75	71	64	167	175	145	159	156	172
	Average	170	175	210	234	264	367	85	85	88	68	66	64	175	182	159	171	167	177
4	De Kalb	170	175	190	238	271	359	85	85	79	68	64	59	157	164	146	161	153	163
5	Average of items 1, 2	170	175	200	280	305	381	79	78	81	62	60	59	174	181	161	172	168	176
6	Average of items 1, 2, 3, 4	170	175	203	257	285	373	82	81	86	65	63	61	176	183	159	170	167	177

[1] Suspended rate.

[2] Present rate.

Exhibit 19, Waffle

Comparison of rates and distances via short rate-making line routes from Brazil-Clinton, Linton-Sullivan, and Southern Illinois to Rockford, Freeport, and intermediate points

Item no.	Destination	Rates			Distances			Percent of 23922 scale extended			Percent of H. & H. scale			Indiana rates based on—				Average of—	
														Col. 10 percents		Col. 13 percents			
		Brazil-Clinton [1]	Linton-Sullivan [1]	Southern Illinois [2]	Brazil-Clinton [3]	Linton-Sullivan [3]	Southern Illinois [3]	Brazil-Clinton	Linton-Sullivan	Southern Illinois	Brazil-Clinton	Linton-Sullivan	Southern Illinois	Brazil-Clinton	Linton-Sullivan	Brazil-Clinton	Linton-Sullivan	Columns 14-16	Columns 15-17
1	Rockford	170	175	200	231	[4] 271	[5] 327	85	84	86	69	64	66	171	178	164	180	168	179
	Freeport	170	175	200	[6] 260	[7] 303	[8] 337	82	78	86	65	60	65	178	192	170	190	174	191
	Average	170	175	200	246	287	332	85	81	86	67	63	65	171	185	166	181	169	183
2	Forreston	170	175	200	[9] 246	[4] 280	[5] 342	85	81	86	67	64	64	171	185	163	175	167	180
	Byron	170	175	200	[9] 228	[4] 262	[5] 324	85	84	90	71	66	66	179	186	159	176	169	181
	Davis Junction	170	175	200	[9] 219	[4] 253	[5] 315	89	84	90	73	67	67	171	186	156	175	164	180
	Average	170	175	200	231	265	327	85	81	87	69	66	66	173	180	164	176	169	178
3	Kirkland	170	175	210	[9] 206	[4] 240	[5] 302	89	88	94	75	71	72	179	187	163	179	171	183
	Genoa	170	175	210	[9] 211	[4] 254	[5] 336	89	84	91	73	67	68	173	188	158	177	166	183
	Elgin	170	175	210	[9] 188	[9] 232	[4] 339	94	88	91	81	71	68	164	181	143	169	154	175
	Bensenville	170	175	210	[9] 169	[9] 213	[10] 321	100	92	94	87	75	69	160	179	136	161	149	170
	Average	170	175	210	194	238	322	94	88	94	78	71	69	169	187	151	171	160	179
4	De Kalb	170	175	190	[9] 194	[4] 234	[11] 323	94	88	85	78	71	63	153	169	138	156	146	163
5	Average of items 1, 2	170	175	200	237	274	329	85	84	87	69	64	66	173	180	164	180	169	180
6	Average of items 1, 2, 3, 4	170	175	203	223	257	326	89	84	88	71	67	67	167	182	161	175	164	179

[1] Suspended rate.
[2] Present rate.
[3] Distance over short rate-making line routes.
[4] C. & E. I.-Momence-C. M. St. P. & P.

EXPLANATION OF ROUTES

[5] I. C.-Mendota-C. M. St. P. & P.
[6] C. M. St. P. & P.-De Kalb-C. & N. W.
[7] C. & E. I.-Hawthorne-I. C.
[8] I. C. direct.
[9] C. M. St. P. & P. direct.
[10] C. & E. I.-Chicago-C. M. St. P. & P.
[11] C. C. C. & St. L.-Danville-N. Y. C.-Chicago-C. M. St. P. & P.

257 *Exhibit 20. Waffle*

Comparison of rates and distances from Brazil-Clinton, Linton-Sullivan, and southern Illinois to Rockford and Freeport based on Short Rate Making Line Distances shown in table on page 548 of report in docket 23130

1	2	3	4	5	6	7	8	9	10	11	12
Destination	Rates			Distances			Percent H. & H. scale			Indiana rates based on column 10, percents	
	Brazil-Clinton	Linton-Sullivan	Southern Illinois	Brazil-Clinton	Linton-Sullivan	Southern Illinois	Brazil-Clinton	Linton-Sullivan	Southern Illinois	Brazil-Clinton	Linton-Sullivan
Rockford	187	192	200	226.5	271.1	328.7	77	70	66	150	180
Freeport	187	192	200	258.6	307.0	337.9	72	66	65	170	190
Average	187	192	200	242.5	289.0	334.0	73	69	64	163	179

258 *Exhibit 21. Waffle*

Reproduction of mileages shown from southern and central Illinois, Brazil-Clinton, and Linton-Sullivan to Rockford and Freeport in exhibit 335 introduced by Witness Wildman in docket 23130

ROCKFORD

1	2	3	4	5	6	7	8
From	Rate	Origin points	Origin line	Route	Total miles	Average miles	Tariff authority
Southern Illinois	200	1	B. & O.	254	388.4	388.4	AA
		6	C. & E. I.	128	2,277.6	379.6	B
		16	C. B. & Q.	321	6,219.2	388.7	JJJ
		6	C. C. C. & St. L.	754	2,443.8	407.3	D
		31	I. C.	221	10,189.7	328.7	Q
		1	J. S. W.	347	326.6	326.6	Q
		19	M. P.	755	8,496.8	447.2	Y
Total		80			30,342.1	379.3	
Springfield	170	6	B. & O.	254	1,488.0	248.0	AA
		20	C. & A.	361	4,252.0	212.6	LLL
		5	C. & E. I.	128	1,485.0	297.0	B
		5	C. & I. M.	362	1,122.0	224.4	DD
		5	C. & N. W.	363	1,111.0	222.2	AG
		6	C. B. & Q.	321	1,569.0	261.5	JJJ
		1	C. S. & St. L.	401	233.4	233.4	DD
		8	C. C. C. & St. L.	365	2,240.0	280.0	D
		9	I. C.	221	1,782.5	198.1	Q
		1	I. T.	391	316.8	316.8	FF
		3	L. & M.	367	782.4	260.8	Q
		3	N. Y. C. & St. L.	369	739.5	246.5	Q
		2	Penn.	406	459.0	229.5	QQQ
		1	S. T.	761	20.12	201.2	Q
		5	Wab.	368	1,247.0	249.4	BB
Total		80			19,028.8	237.9	
Brazil-Clinton	187	6	B. & O.	503	1,450.2	241.7	F
		5	C. & E. I.	128	1,202.0	240.4	B
		11	C. M. St. P. & P.	24	2,491.5	226.5	AAA
		4	C. C. C. & St. L.	346	1,062.0	265.5	D
		16	Penn.	766	5,172.8	323.3	QQQ
Total		42			11,378.5	270.9	
Linton-Sullivan	192	17	C. & E. I.	128	4,608.7	271.1	B
		18	C. I & L.	767	5,414.4	300.8	E
		13	C. M. St. P. & P.	182	3,569.8	274.6	AAA
		3	C. C. C. & St. L.	768	855.6	285.2	D
		6	I. C.	221	1,851.0	308.5	Q
		7	Penn.	766	2,688.0	384.0	QQQ
Total		64			18,987.5	296.7	

Reproduction of mileages shown from southern and central Illinois, Brazil-Clinton, and Linton-Sullivan to Rockford and Freeport in exhibit 335 introduced by Witness Wildman in docket 23130—Continued

259 FREEPORT

1	2	3	4	5	6	7	8
From	Rate	Origin points	Origin line	Route	Total miles	Average miles	Tariff authority
Southern Illinois	200	1	B. & O.	254	416.4	416.4	AA
		6	C. & E. I.	318	2,054.4	342.4	B
		16	C. B. & Q.	321	6,897.6	431.1	JJJ
		6	C. C. C. & St. L.	320	2,455.8	409.3	D
		31	I. C.	19	10,474.9	[1] 337.9	Q
		1	J. S. W.	319	320.2	320.2	B
		19	M. P.	755	9,028.8	475.2	Y
Total		80			31,648.1	394.6	
Springfield	170	6	B. & O.	254	1,655.0	276.0	AA
		20	C. & A.	361	5,100.0	255.0	LLL
		5	C. & E. I.	318	1,299.0	259.8	B
		5	C. & I. M.	353	1,168.5	233.7	DD
		5	C. & N. W.	363	1,373.0	274.6	AG
		6	C. B. & Q.	399	1,989.0	331.5	JJJ
		1	C. S. & St. L.	401	261.4	261.4	DD
		8	C. C. C. & St. L.	70	2,087.2	260.9	D
		9	I. C.	19	1,865.7	[1] 207.3	Q
		1	I. T.	391	289.1	289.1	FF
		3	L. & M.	390	810.0	270.0	Q
		3	N. Y. C. & St. L.	72	767.4	255.8	Q
		2	Penn.	406	543.8	271.9	QQQ
		1	S. T.	762	210.5	210.5	Q
		9	Wab.	405	2,820.6	313.4	BB
Total		84			22,241.2	264.8	
Brazil-Clinton	187	5	B. & O.	769	1,683.6	280.6	F
		5	C. & E. I.	128	1,414.0	282.8	B
		11	C. M. St. P. & P.	143	2,844.6	[1] 258.6	AAA
		4	C. C. C. & St. L.	754	1,208.0	302.0	D
		16	Penn.	766	5,616.0	351.0	QQQ
Total		42			12,766.2	304.0	
Linton-Sullivan	192	17	C. & E. I.	128	5,329.5	313.5	B
		18	C. I. & L.	767	6,145.2	341.4	E
		13	C. M. St. P. & P.	143	3,991.0	[1] 307.0	AAA
		3	C. C. C. & St. L.	754	965.7	321.9	D
		6	I. C.	19	1,906.2	317.7	Q
		7	Penn.	766	2,881.9	411.7	QQQ
Total		64			21,219.5	331.6	

[1] Short rate making line.

200 KEY TO ROUTING

19. I. C. R. R. direct
24. C. M. St. P. & P. R. R. direct
70. C. C. C. & St. L. Ry., Pana, Illinois, and I. C. R. R.
72. N. Y. C. & St. L. R. R., Ramsey, Illinois, and I. C. R. R.
128. C. & E. I. Ry, Momence, Illinois, and C. M. St. P. & P. R. R.
143. C. M. St. P. & P. R. R., Delmar, Illinois; C. M. & G. Ry, DeKalb, Illinois; and C. & N. W. Ry.
182. C. M. St. P. & P. R. R., Delmar, Illinois, and C. M. & G. Ry.
221. I. C. R. R., Mendota, Illinois, and C. M. St. P. & P. R. R.
254. B. & O. R. R., Bando, Illinois, and C. & N. W. Ry.
318. C. & E. I. Ry., Sullivan, Illinois, and I. C. R. R.
319. J. S. W. R. R., Mt. Vernon, Illinois; C. & E. I. Ry., Sullivan, Illinois; and I. C. R. R.
320. C. C. C. & St. L. Ry, Bloomington, Illinois, and I. C. R. R.
321. C. B. & Q. R. R., Mendota, Illinois, and C. M. St. P. & P. R. R.
346. C. C. C. & St. L. Ry., Danville, Illinois; N. Y. C. R. R., Momence, Illinois; and C. M. St. P. & P. R. R.
347. J. S. W. R. R., Mt. Vernon, Illinois; M. P. R. R., Tamaroa, Illinois; I. C. R. R., Mendota, Illinois; and C. M. St. P. & P. R. R.
353. C. & I. M. Ry., Cimic, Illinois, and I. C. R. R.
361. C. & A. R. R., Granville, Illinois, and C. M. St. P. & P. R. R.
362. C. & I. M. Ry., Cimic, Illinois; I. C. R. R., Mendota, Illinois; and C. M. St. P. & P. R. R.
363. C. & N. W. Ry., Rochelle, Illinois, and C. M. St. P. & P. R. R.
365. C. C. C. & St. L. Ry., Pana, Illinois, and I. C. R. R.
367. L. & M. Ry., Mt. Olive, Illinois; I. C. R. R., Mendota, Illinois; and C. M. St. P. & P.
368. Wabash Ry., Decatur, Illinois, and I. C. R. R.
369. N. Y. C. & St. L. R. R., Ramsey, Illinois; I. C. R. R., Mendota, Illinois; and C. M. St. P. & P. R. R.
390. L. & M. Ry., Mt. Olive, Illinois, and I. C. R. R.
391. I. T. R. R., Mont, Illinois, and I. C. R. R.
399. C. B. & Q. R. R., Sterling, Illinois, and C. & N. W. Ry.
401. C. S. & St. L. Ry., Springfield, Illinois; C. & I. M. Ry., Barr, Illinois; and C. & N. W. Ry.
405. Wabash Ry., Brisbane, Illinois; E. J. & E. Ry., West Chicago, Illinois; and C. & N. W. Ry.
406. Pennsylvania R. R., Peoria, Illinois; C. & A. R. R., Granville, Illinois; and C. M. St. P. & P. R. R.
503. B. & O. R. R., West Dana, Indiana, and C. M. St. P. & P. R. R.
754. C. C. C. & St. L. Ry., Danville, Illinois; N. Y. C. R. R., Gibson, Indiana; I. H. B. R. R., Proviso, Illinois; and C. & N. W. Ry.
755. M. P. R. R., East St. Louis, Illinois; Wabash Ry, Staunton, Illinois; and C. & N. W. Ry.
761. S. T. Ry., Springfield, Illinois; I. C. R. R., Mendota, Illinois; and C. M. St. P. & P. R. R.
762. S. T. Ry., Springfield, Illinois, and I. C. R. R.
766. P. R. R., Chicago, Illinois, and I. C. R. R.
767. C. I. & L. Ry., Hammond, Indiana; I. H. B. R. R., Bensenville, Illinois; and C. M. St. P. & P. R. R.
768. C. C. C. & St. L. Ry., Danville, Illinois; N. Y. C. R. R., Delmar, Illinois; and C. M. St. P. & P. R. R.
769. B. & O. R. R., Decatur, Illinois, and I. C. R. R.

TARIFF AUTHORITY FOR RATES

B. C. & E. I. Ry., I. C. C. No. 263
D. C. C. C. & St. L. Ry., I. C. C. No. 8513
E. C. I. & L. Ry., I. C. C. No. 4264
F. B. & O. R. R., I. C. C. No. WL-9794
Q. I. C. R. R., I. C. C. No. E-1689
Y. M. P. R. R., I. C. C. No. A-7461
AA. B. & O. R. R., I. C. C. No. WL-9520
BB. Wabash Ry., I. C. C. No. 6160
DD. C. & I. M. Ry., I. C. C. No. B-178
FF I. T. R. R., I. C. C. No. 26
AAA. C. M. St. P. & P. R. R., I. C. C. No. B-5133
JJJ. C. B. & Q. R. R., I. C. C. No. 17158
LLL. C. & A. R. R., I. C. C. No. A-1759
QQQ. Pennsylvania R. R., I. C. C. No. 17
AG. C. M. St. P. & P. R. R., I. C. C. No. B-5132

261 TARIFF AUTHORITY FOR DISTANCES

B. & O. R. R., I. C. C. No. 21650
C. & A. R. R., I. C. C. No. A-1910
C. & E. I. Ry., I. C. C. No. 153
C. & I. M. Ry., I. C. C. No. B-220
C. & N. W. Ry., I. C. C. No. 9986
C. B. & Q. R. R., I. C. C. No. 17392
C. I. & L. Ry., I. C. C. No. 4431
C. M. St. P. & P. R. R., I. C. C. No. B-6113
C. S. & St. L. Ry., I. C. C. No. 44
C. C. C. & St. L. Ry., I. C. C. No. 8515
I. C. R. R., I. C. C. No. A-10441
I. T. R. R., I. C. C. No. 39
J. S. W. R. R., I. C. C. No. 12
L. & M. Ry., I. C. C. No. 277
M. P. R. R., I. C. C. No. A-7788
N. Y. C. & St. L. R. R., I. C. C. No. 5035
Penna. R. R., I. C. C. No. 5
S. T. Ry., I. C. C. No. 43
Wab. Ry., I. C. C. No. 6442

Exhibit 22. Waffle

Statement of rates, distances, and differentials from Brazil-Clinton, Linton-Sullivan, central Illinois and southern Illinois to southern Wisconsin points

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
	Distances				Rates				Distances—Indiana versus southern and central Illinois				Differentials—Indiana versus southern and central Illinois			
Destination	Brazil-Clinton	Linton-Sullivan	Central Illinois	Southern Illinois	Brazil-Clinton	Linton-Sullivan	Central Illinois	Southern Illinois	Brazil-Clinton under southern Illinois	Linton-Sullivan under southern Illinois	Brazil-Clinton under central Illinois	Linton Sullivan over central Illinois	Brazil-Clinton under southern Illinois	Linton-Sullivan under southern Illinois	Brazil-Clinton under central Illinois	Linton-Sullivan over central Illinois
Beloit	282	311	263	388	245	255	245	275	106	77	[1] 19	[1] 48	30	20	----	10
Burlington	264	296	294	396	240	250	245	275	132	100	30	[1] 2	35	25	5	5
Janesville	285	316	277	402	245	255	245	275	117	86	[1] 8	[1] 39	30	20	----	10
Kenosha	250	282	278	401	198	208	203	233	151	119	[2] 28	[1] 4	35	25	5	5
Madison	324	354	313	434	245	255	245	275	110	80	[2] 11	[1] 41	30	20	----	10
Milwaukee	280	313	314	423	223	233	228	258	143	110	34	[2] 1	35	25	5	5
Watertown	325	361	326	456	270	280	270	300	131	95	[1] 1	[1] 35	30	20	----	10
Average	287	319	295	414	238	248	240	270	127	95	8	[1] 24	32	22	2	8

[1] Over.
[2] Under.

263 *Exhibit 23, Waffle*

Statement of rates and average distances, via short tariff routes, from Brazil-Clinton, Linton-Sullivan, central Illinois and southern Illinois to points shown herein:

BELOIT, WIS.

Item no.	1 Origin group	2 Initial carrier	3 Origin points	4 Total miles	5 Average	6 Rate	7 Route
1	Brazil-Clinton	B. & O	3	792	264	245	Hillsdale, C. & E. I.; Chicago, C. & N. W.
		C. & E. I	5	1,295	259	245	Momence, C., M., St. P. & P.
		C., M., St. P. & P	4	956	239	245	Delmar, C., M. & G.; De Kalb, C. & N. W.
		C., C., C. & St. L	4	1,104	276	245	Danville, N. Y. C.; Chicago, C. & N. W.
		Penna	7	2,362	336	245	Chicago, C. & N. W.
		Total	23	6,499	282	-----	
2	Linton-Sullivan	C. & E. I	13	3,757	289	255	Momence, C., M., St. P. & P.
		C., I. & L	4	1,300	325	255	Chicago, C. & N. W.
		C., M., St. P. & P	7	1,981	283	255	Delmar, C., M. & G.; De Kalb, C. & N. W.
		C., C., C. & St. L	5	1,495	299	255	Danville, N. Y. C.; Chicago, C. & N. W.
		I. C	6	1,956	326	255	Mendota, C., M., St. P. & P.
		Penna	5	1,940	388	255	Chicago, C. & N. W.
		Total	40	12,429	311	-----	
3	Central Illinois	Alton	20	5,020	251	245	Peoria, C. & N. W.
		B. & O	5	1,270	254	245	Bando, C. & N. W.
		C. & E. I	5	1,575	315	245	Momence, C., M., St. P. & P.
		C. & I. M	5	1,210	242	245	Cimic, I. C.; Mendota, C., M., St. P. & P.
			4	928	232	245	Barr, C. & N. W.
		C. & N. W	14	3,360	240	245	C. & N. W. direct.
		C., B. & Q	6	1,776	296	245	Mendota, C., M., St. P. & P.
		C., S. & St. L	2	430	215	245	Springfield, I. C.; Mendota, C., M., St. P. & P.
		C., C., C. & St. L	8	2,480	310	245	Gillespie, C. & N. W.
		I. C	9	1,953	217	245	Mendota, C., M., St. P. & P.
		Ill. Term	6	1,692	282	245	Peoria, C. & N. W.
		L. & M	3	837	279	245	Mount Olive, I. C.; Mendota, C. M., St. P. & P.
		N. Y. C. & St. L	3	792	264	245	Ramsey, I. C.; Mendota, C., M., St. P. & P.
		Penna	1	353	353	245	Peoria, Alton; Granville, C., M., St. P. & P.
		S. T	1	219	219	245	Springfield, I. C.; Mendota, C., M., St. P. & P.
		Wabash	9	2,628	292	245	Manhattan, C., M., St. P. & P.
		Total	101	26,523	263	-----	
4	Southern Illinois	C. & E. I	7	2,751	393	275	Momence, C., M., St. P. & P.
		C., B. & Q	9	3,456	384	275	Virden, C. & N. W.
		C., C., C. & St. L	6	2,448	408	275	Danville, N. Y. C.; Chicago, C. & N. W.
		I. C	19	6,555	345	275	Mendota, C., M., St. P. & P.
		Mo. Pac	22	9,216	419	275	(1).
		Total	63	24,426	388	-----	

See footnotes at end of table.

Statement of rates and average distances, via short tariff routes, from Brazil-Clinton, Linton-Sullivan, central Illinois and southern Illinois to points shown herein—Continued

BURLINGTON, WIS.

Item no.	1 Origin group	2 Initial carrier	3 Origin points	4 Total miles	5 Average	6 Rate	7 Route
1	Brazil-Clinton	B. & O	3	735	245	240	Hillsdale, C. & E. I.; Chicago, M., St. P., S., S. & M.
		C. & E. I	5	1,210	242	240	Chicago, M., St. P., S., S. & M.
		C., M., St. P. & P	4	892	223	240	Blue Island, I. H. B.; Franklin Park, M., St. P., S., S. & M.
		C., C., C. & St. L	4	1,020	255	240	Danville, N. Y. C.; Gibson, I. H. B; Franklin Park, M., St. P., S. & M.
		Penna	7	2,219	317	240	Chicago, M., St. P., S., S. & M
		Total	23	6,076	264	----	
2	Linton-Sullivan	C. & E. I	13	3,536	272	250	Chicago, M., St. P., S., S. & M.
		C., I. & L	4	1,220	305	250	Hammond, I. H. B.; Franklin Park, M., St. P., S., S. & M.
		C., M., St. P. & P	7	1,869	267	250	Blue Island, I. H. B.; Franklin Park, M. St. P. S. S. & M.
		C., C., C. & St. L	5	1,385	277	250	Danville, N. Y. C.; Gibson, I. H. B.; Franklin Park, M. St. P. S. S. & M.
		I. C	6	1,986	331	250	Riverdale, I. H. B.; Franklin Park, M. St. P. S. S. & M.
		Penna	5	1,845	369	250	Indianapolis-Chicago, M. St. P. S. S. & M.
		Total	40	11,841	296	----	
3	Central Illinois	Alton	20	5,060	253	245	Joliet, E. J. & E.; Leithton, M., St. P. S. S. & M.
		B. & O					
		C. & E. I	5	1,490	298	245	Chicago, M., St. P. S. S. & M.
		C. & I. M	4	1,112	278	245	Auburn, Alton; Joliet, E. J. & E.; Leighton, M. St. P. S. S. & M.
		C. & N. W					
		C., B. & Q	6	2,082	347	245	Eola, E., J. & E.; Leithton, M., St. P. S. S. & M.
		C., S. & St. L	2	566	283	245	Springfield, Wabash; Chicago, M St. P. S. S. & M.
		C., C., C. & St. L	9	3,132	348	245	Danville, N. Y. C.; Gibson, I. H. B.; Franklin Park, M., St. P. S. S. & M.
		I. C	9	2,349	261	245	Riverdale, I. H. B.; Franklin Park, M. St. P. S. S. & M.
		Ill. Term	6	2,118	353	245	Staunton, Wabash; Brisbane, E., J. & E.; Leithon, M. St. P. P. S. S. & M.
		L. & M	3	981	327	245	Mount Olive, I. C.; Riverdale, I. H. B.; Franklin Park, M. St. P. S. S. & M.
		N. Y. C. & St. L	3	951	317	245	Neoga, I. C.; Riverdale, I. H. B.; Franklin Park, M. St. P. S. S. & M.
		Penna	1	243	243	245	Atlanta, Alton; Joliet, E. J. & E.; Leithton, M. St. P. S. S. & M.
		S. T	1	245	245	245	Springfield, Alton; Joliet, E. J. & E; Leithton, M. St. P. S. S. & M.
		Wabash	9	2,592	288	245	Brisbane, E., J. & E.; Leithton, M. St. P. S. S. & M.
		Total	78	22,921	294	----	
	Southern Illinois	C. & E. I	7	2,632	376	275	Chicago, M. St. P. S. S. & M.
		C., B. & Q	9	4,104	456	275	Eola, E., J. & E.; Leithton, M. St. P. S. S. & M.
		C., C., C. & St. L	6	2,316	386	275	Danville, N. Y. C.; Gibson, I. H. B.; Franklin Park, M. St. P. S. S. & M.
		I. C	19	7,220	380	275	Riverdale, I. H. B.; Franklin Park, M. St. P. S. S. & M.
		Mo. Pac	19	7,471	393	275	(2).
		Total	60	23,743	396	----	

See footnotes at end of table.

Statement of rates and average distances, via short tariff routes, from Brazil-Clinton, Linton-Sullivan, central Illinois and southern Illinois to points shown herein—Continued

264 JANESVILLE, WISCONSIN

Item no.	1 Origin group	2 Initial carrier	3 Origin points	4 Total miles	5 Average	6 Rate	7 Route
1	Brazil-Clinton	B. & O.	3	792	264	245	Hillsdale, C. & E. I.; Chicago, C. & N. W.
		C. & E. I.	5	1,305	261	245	Chicago, C. & N. W.
		C. M. St. P. & P.	4	1,012	253	245	Delmar, C. M. & G.; De Kalb, C. & N. W.
		C. C. C. & St. L.	4	1,104	276	245	Danville, N. Y. C.; Chicago, C. & N. W.
		Penna.	7	2,352	336	245	Chicago, C. & N. W.
		Total	23	6,565	285		
2	Linton-Sullivan	C. & E. I.	13	3,783	291	255	Chicago, C. & N. W.
		C. I. & L.	4	1,300	325	255	Chicago, C. & N. W.
		C. M. St. P. & P.	7	2,079	297	255	Delmar, C. M. & G.; De Kalb, C. & N. W.
		C. C. C. & St. L.	5	1,495	299	255	Danville, N. Y. C.; Chicago, C. & N. W.
		I. C.	6	2,052	342	255	Mendota, C. M. St. P. & P.
		Penna.	5	1,940	388	255	Chicago, C. & N. W.
		Total	40	12,649	316		
3	Central Illinois	Alton	20	5,300	265	245	Peoria, C. & N. W.
		B. & O.	5	1,340	268	245	Bando, C. & N. W.
		C. & E. I.	5	1,585	317	245	Chicago, C. & N. W.
		C. & I. M.	9	2,376	264	245	Barr, C. & N. W.
		C. & N. W.	14	3,556	254	245	C. & N. W. direct.
		C. B. & Q.	6	1,872	312	245	Mendota, C. M. & St. P.
		C. S. & St. L.	2	502	251	245	Springfield, C. & I. M.; Barr, C. & N. W.
		C. C. C. & St. L.	8	2,592	324	245	Gillespie, C. & N. W.
		I. C.	9	2,097	233	245	Mendota, C. M. & St. P.
		Ill. Term.	6	1,776	296	245	Peoria, C. & N. W.
		L. & M.	3	885	295	245	Mt. Olive, I. C.; Mendota, C. M. St. P. & P.
		N. Y. C. & St. L.	3	840	280	245	Ramsey, I. C.; Mendota, C. M. St. P. & P.
		Penna.	1	272	272	245	Peoria, C. & N. W.
		S. T.	1	235	235	245	Springfield, I. C.; Mendota, C. M. St. P. & P.
		Wabash	9	2,709	301	245	Brisbane, E. J. & E.; Barrington, C. & N. W.
		Total	101	27,937	277		
4	Southern Illinois	C. & E. I.	7	2,765	395	275	Chicago, C. & N. W.
		C. B. & Q.	9	3,582	398	275	Virden, C. & N. W.
		C. C. C. & St. L.	6	2,448	408	275	Danville, N. Y. C.; Chicago, C. & N. W.
		I. C.	19	6,859	361	275	Mendota, C. M. St. P. & P.
		Mo. Pac.	23	10,048	437	275	(1).
		Total	64	25,702	402		

See footnotes at end of table.

Statement of rates and average distances, via short tariff routes, from Brazil-Clinton, Linton-Sullivan, central Illinois and southern Illinois to points shown herein—Continued

KENOSHA, WISCONSIN

Item no.	1 Origin group	2 Initial carrier	3 Origin points	4 Total miles	5 Average	6 Rate	7 Route
1	Brazil-Clinton	B. & O	3	675	225	198	Hillsdale, C. & E. I.; Chicago, C. & N. W.
		C. & E. I	5	1,110	222	198	Chicago, C. & N. W.
		C. M. St. P. & P	4	924	231	198	Chicago, C. & N. W.
		C. C. C. & St. L	4	952	238	198	Danville, N. Y. C.; Chicago, C. & N. W.
		Penna	7	2,079	297	198	Chicago, C. & N. W.
		Total	23	5,740	250	----	
2	Linton-Sullivan	C. & E. I	13	3,276	252	208	Chicago, C. & N. W.
		C. I. & L	4	1,144	286	208	Chicago, C. & N. W.
		C. M. St. P. & P	7	1,925	275	208	Chicago, C. & N. W.
		C. C. C. & St. L	5	1,305	261	208	Danville, N. Y. C.; Chicago, C. & N. W.
		I. C	6	1,902	317	208	Chicago, C. & N. W.
		Penna	5	1,745	349	208	Chicago, C. & N. W.
		Total	40	11,297	282	----	
3	Central Illinois	Alton	20	4,940	247	203	Chicago, C. & N. W.
		B. & O	5	1,510	302	203	Bando, C. & N. W.
		C. & E. I	5	1,390	278	203	Chicago, C. & N. W.
		C. & I. M	5	1,325	265	203	Taylorville, Wabash; Chicago, C. & N. W.
		C. & N. W	14	4,018	287	203	C. & N. W. direct.
		C. B. & Q	6	2,046	341	203	Eola, E. J. & E.; Waukegan, C. & N. W.
		C. S. & St. L	2	526	263	203	Springfield, Wabash; Chicago, C. & N. W.
		C. C. C. & St. L	9	2,520	280	203	Danville, N. Y. C.; Hartsdale, E. J. & E.; Waukegan, C. & N. W.
		I. C	9	2,223	247	203	Chicago, C. & N. W.
		Ill. Term	6	1,980	330	203	Peoria, C. & N. W.
		L. & M	3	927	309	203	Mt. Olive, I. C.; Chicago, C. & N. W.
		N. Y. C. & St. L	3	897	299	203	Neoga, I. C.; Chicago, C. & N. W.
		Penna	1	306	306	203	Peoria, C. & N. W.
		S. T	1	239	239	203	Springfield, Alton; Chicago, C. & N. W.
		Wabash	9	2,439	271	203	Chicago, C. & N. W.
		Total	98	27,286	278	----	
4	Southern Illinois	C. & E. I	7	2,492	356	233	Chicago, C. & N. W.
		C. B. & Q	9	4,050	450	233	Eola, E. J. & E.; Waukegan, C. & N. W.
		C. C. C. & St. L	6	2,220	370	233	Danville, N. Y. C.; Chicago, C. & N. W.
		I. C	19	6,954	366	233	Chicago, C. & N. W.
		Mo. Pac	22	9,552	434	233	(9).
		Total	63	25,268	401	----	

See footnotes at end of table.

Statement of rates and average distances, via short tariff routes, from Brazil-Clinton, Linton-Sullivan, central Illinois and southern Illinois to points shown herein—Continued

265 MADISON, WISCONSIN

Item no.	1 Origin group	2 Initial carrier	3 Origin points	4 Total miles	5 Average	6 Rate	7 Rate
1	Brazil-Clinton	B. & O	3	909	303	245	Hillsdale, C. & E. I.; Chicago, C. & N. W.
		C. & E. I	5	1,560	300	245	Chicago, C. & N. W.
		C. M. St. P. & P	4	1,148	287	245	Delmar, C. M. & G; De Kalb, C. & N. W.
		C. C. C. & St. L	4	1,260	315	245	Danville, N. Y. C.; Chicago, C. & N. W.
		Penna	7	2,625	375	245	Logansport, Penna.; Chicago, C. & N. W.
		Total	23	7,442	324	-----	
2	Linton-Sullivan	C. & E. I	13	4,290	330	255	Chicago, C. & N. W.
		C. I. & L	4	1,456	364	255	Chicago, C. & N. W.
		C. M. St. P. & P	7	2,317	331	255	Delmar, C. M. & G.; De Kalb, C. & N. W.
		C. C. C. & St. L	5	1,690	338	255	Danville, N. Y. C.; Chicago, C. & N. W.
		I. C	6	2,280	380	255	I. C. direct.
		Penna	5	2,135	427	255	Logansport, Penna.; Chicago, C. & N. W.
		Total	40	14,168	354	-----	
3	Central Illinois	Alton	20	6,500	325	245	Chicago, C. M. St. P. & P.
		B. & O	5	1,510	302	245	Bando, C. & N. W.
		C. & E., I	6	1,610	322	245	Sullivan, I. C.
		C. & I. M	9	2,682	298	245	Barr, C. & N. W.
		C. & N. W	14	4,018	287	245	C. & N. W. direct.
		C. B. & Q	6	2,112	352	245	Mendota, C. M. St. P. & P.
		C. S. & St. L	2	536	268	245	Springfield, I. C.
		C. C. C. & St. L	8	2,560	320	245	Pana, I. C.
		I. C	9	2,430	270	245	I. C. direct.
		Ill. Term	6	1,980	330	245	Peoria, C. & N. W.
		L. & M	3	996	332	245	Mt. Olive, I. C.
		N. Y. C. & St. L	3	1,089	363	245	Neoga, I. C.
		Penna	1	306	306	245	Peoria, C. & N. W.
		S. T	1	272	272	245	Springfield, I. C.
		Wabash	9	3,060	340	245	Brisbane, E. J. & E.; Barrington, C. & N. W.
		Total	101	31,661	313	-----	
4	Southern Illinois	C. & E. I	7	2,800	400	275	Sullivan, I. C.
		C. B. & Q	9	3,888	432	275	Virden, C. & N. W.
		C. C. C. & St. L	6	2,682	447	275	Danville, N. Y. C.; Chicago, C. & N. W.
		I. C	19	7,581	399	275	I. C. direct.
		Mo. Pac	22	10,370	471	275	(1).
		Total	63	27,321	434	-----	

See footnotes at end of table.

Statement of rates and average distances, via short tariff routes, from Brazil-Clinton, Linton-Sullivan, central Illinois and southern Illinois to points shown herein—Continued

MILWAUKEE, WISCONSIN

Item no.	1 Origin group	2 Initial carrier	3 Origin points	4 Total miles	5 Average	6 Rate	7 Rate
1	Brazil-Clinton	B. & O	3	774	258	223	Hillsdale, C. & E. I.; Chicago, C. & N. W.
		C. & E. I	5	1,275	255	223	Chicago, C. & N. W.
		C. M. St. P. & P	4	992	248	223	Faithorn and Bensenville, C. M. St. P. & P.
		C. C. C. & St. L	4	1,080	270	223	Danville, N. Y. C.; Chicago, via Mayfair and Skokie Jct., C. & N. W.
		Penna	7	2,310	330	223	Logansport, Penna.; Chicago, C. & N. W.
		Total	23	6,431	280	----	
2	Linton-Sullivan	C. & E. I	13	3,705	285	233	Chicago, C. & N. W.
		C. I. & L	4	1,276	319	233	Chicago, C. & N. W.
		C. M. St. P. & P	7	2,044	292	233	Faithorn and Bensenville, C. M. St. P. & P.
		C. C. C. & St. L	5	1,470	294	233	Danville, N. Y. C.; Chicago, via Mayfair and Skokie Jct., C. & N. W.
		I. C	6	2,100	350	233	Chicago, C. & N. W.
		Penna	5	1,910	382	233	Logansport, Penna.; Chicago, C. & N. W.
		Total	40	12,505	313	----	
3	Central Illinois	Alton	20	5,600	280	228	Chicago, C. & N. W.
		B. & O	4	1,172	293	228	Springfield-Alton-Chicago, C. M. St. P. & P.
		C. & E. I	5	1,555	311	228	Chicago, C. M. St. P. & P.
		C. & I. M	9	2,799	311	228	Cimic, I. C.; Chicago, C. M. St. P. & P.
		C. & N. W	14	4,452	318	228	Via Mayfair and Skokie Jct., C. & N. W.
		C. B. & Q	6	2,304	384	228	Eola, E. J. & E.; Spaulding, C. M. St. P. & P.
		C. S. & St. L	2	592	296	228	Springfield-Wabash-Chicago, C. M. St. P. & P.
		C. C. C. & St. L	9	3,285	365	228	Danville, N. Y. C.; Chicago, C. M. St. P. & P.
		I. C	9	2,520	280	228	Chicago, C. M. St. P. & P.
		Ill. Term	6	2,166	361	228	Peoria, C. & N. W.
		L. & M	3	1,026	342	228	Mt. Olive, I. C.; Chicago, C. M. St. P. & P.
		N. Y. C. & St. L	3	996	332	228	Neoga, I. C.; Chicago, C. & N. W.
		Penna	1	270	270	228	Atlanta-Alton-Chicago, C. M. St. P. & P.
		S. T	1	272	272	228	Springfield-Alton-Chicago, C. M. St. P. & P.
		Wabash	9	2,736	304	228	Chicago, C. M. St. P. & P.
		Total	101	31,745	314	----	
4	Southern Illinois	C. & E. I	7	2,723	389	258	Chicago, C. & N. W.
		C. B. & Q	9	4,320	480	258	Eola, E. J. & E.; Rondout, C. M. St. P. & P.
		C. C. C. & St. L	6	2,418	403	258	Danville, N. Y. C.; Chicago, via Mayfair and Skokie Jct., C. & N. W.
		I. C	19	7,581	399	258	Chicago, C. & N. W.
		Mo. Pac	21	9,177	437	258	(5).
		Total	62	26,219	423	----	

See footnotes at end of table.

Statement of rates and average distances, via short tariff routes, from Brazil-Clinton, Linton-Sullivan, central Illinois and southern Illinois to points shown herein—Continued

266 WATERTOWN, WIS.

Item no.	1 Origin group	2 Initial carrier	3 Origin points	4 Total miles	5 Average	6 Rate	7 Rate
1	Brazil-Clinton	B. & O.	3	909	303	270	Hillsdale, C. & E. I.; Chicago, C. & N. W.
		C. & E. I.	5	1,500	300	270	Chicago, C. & N. W.
		C. M. St. P. & P.	4	1,172	293	270	Delmar, C. M. & G.; De Kalb, C. & N. W.
		C. C. C. & St. L.	4	1,260	315	270	Danville, N. Y. C.; Chicago, C. & N. W.
		Penna.	7	2,625	375	270	Logansport, Penna.; Chicago, C. & N. W.
		Total	28	7,466	325	-----	
2	Linton-Sullivan	C. & E. I.	13	4,290	330	280	Chicago, C. & N. W.
		C. I. & L.	4	1,456	364	280	Do.
		C. M. St. P. & P.	7	2,359	337	280	Delmar, C. M. & G.; De Kalb, C. & N. W.
		C. C. C. & St. L.	5	1,690	338	280	Danville, N. Y. C.; Chicago, C. & N. W.
		I. C.	6	2,514	419	280	Mendota, C. M. St. P. & P.
		Penna.	5	2,135	427	280	Logansport, Penna.; Chicago, C. M. St. P. & P.
		Total	40	14,444	361	-----	
3	Central Illinois	Alton	20	6,100	305	270	Peoria, C. & N. W.
		B. & O.	5	1,540	308	270	Bando, C. & N. W.
		C. & E. I.	5	1,780	356	270	Chicago, C. & N. W.
		C. & I. M.	9	2,727	303	270	Barr, C. & N. W.
		C. & N. W.	14	4,102	293	270	C. & N. W. direct.
		C. B. & Q.	6	2,292	382	270	Sterling, C. & N. W.
		C. S. & St. L.	2	580	290	270	Springfield, C. & I. M.; Barr, C. & N. W.
		C. C. C. & St. L.	8	2,912	364	270	Gillespie, C. & N. W.
		I. C.	9	2,790	310	270	Mendota, C. M. St. P. & P.
		Ill. Term.	6	2,016	336	270	Peoria, C. & N. W.
		L. & M.	3	1,062	354	270	Benld, C. & N. W.
		N. Y. C. & St. L.	3	1,281	427	270	Neoga, I. C.; Peoria, C. & N. W.
		Penna.	1	312	312	270	Peoria, C. & N. W.
		S. T.	1	297	297	270	Springfield, Alton, Peoria, C. & N. W.
		Wabash	9	3,141	349	270	Chicago, C. & N. W.
		Total	101	32,932	326	-----	
4	Southern Illinois	C. & E. I.	7	3,038	434	300	Chicago, C. & N. W.
		C. B. & Q.	9	3,942	438	300	Virden, C. & N. W.
		C. C. C. & St. L.	6	2,682	447	300	Danville, N. Y. C.; Chicago, C. & N. W.
		I. C.	19	8,322	438	300	Mendota, C. M. St. P. & P.
		Mo. Pac.	23	11,190	487	300	(1)
		Total	64	29,174	456	-----	

[1] Group 1 via East St. Louis, L. & M.; Benld., C. & N. W. Group 10 via East St. Louis, L. & M.; Benld, C. & N. W. Group 17 via Marion, I. C.; Mendota, C. M. St. P. & P.
[2] Group 1 via Benton, C. & E. I.; Chicago, M. S. T. P. S. S. & M. Group 17 via Marion, I. C.; Riverdale, I. H. B.; Franklin Park, M. S. T. P. S. S. & M.
[3] Group 1 via East St. Louis, Alton, Joliet, E. J. & E.; Waukegan, C. & N. W. Group 10 via East St. Louis, L. & M.; Benld, C. & N. W. Group 17 via Marion, I. C.; Chicago, C. & N. W.
[4] Group 1 via East St. Louis, L. & M.; Benld, C. & N. W. Group 10 via Valley Junction, I. C. Group 17 via Marion, I. C.
[5] Group 1 via Benton, C. & E. I.; Chicago Heights, E. J. & E.; Rondout, C. N. S. & M. Group 10 via East St. Louis, Alton, Chicago, C. & N. W. Group 17 via Marion, I. C.; Chicago, C. & N. W

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Exhibit 24. Waffle

Recapitulation of constructed Indiana rates based on southern Illinois and central Illinois percents of the 23922 and H. & H. scales, as developed in the exhibits listed below

Exhibit		1	2	3	4	5	6	7	8	9	10	11	12	13	14
		Rockford				Freeport				Rockford and Freeport					
		Brazil-Clinton		Linton-Sullivan		Brazil-Clinton		Linton-Sullivan		Brazil-Clinton		Linton-Sullivan		Average of 23922 and H. & H.	
Our no.	Record no.	23922	H. & H.	23922	H. & H.	23922	H. & H.	23922	H. & H.	23922	H. & H.	23922	H. & H.	Brazil-Clinton	Linton-Sullivan
7		167	149	174	164	168	158	181	173	168	154	174	169	161	172
8		169	166	176	183	170	175	183	191	170	170	176	186	170	181
9		161	149	168	164	178	175	192	191	174	159	181	174	167	178
10		169	166	176	183	176	186	190	203	176	175	183	192	176	187
11		171	164	178	180	178	167	192	187	173	163	187	179	168	183
12		174	164	181	172	181	169	187	176	174	162	181	176	168	179
13		171	164	178	180	178	170	192	190	171	166	185	181	169	183
14			159		180		170		190		163		179	163	179
Average		169	160	176	176	176	171	188	188	172	164	181	180	168	180

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Exhibit 25. Waffle

Average spread in distance, Brazil-Clinton and Linton-Sullivan under southern Illinois, based on combined average distances to Rockford and Freeport shown in exhibits listed below

Exhibit		1	2	3	4	5
					Indiana under southern Illinois	
Our number	Record number	Brazil-Clinton	Linton-Sullivan	Southern Illinois	Brazil-Clinton	Linton-Sullivan
7		251	295	381	130	86
9		251	295	361	110	66
11		246	290	332	90	42
12		288	313	381	93	68
13		246	287	332	86	45
14		243	289	334	91	45
Average		254	294	354	100	60

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Exhibit 26. Waffle

Statement of differentials in effect between various coal fields

Item no.	1 From—	2 Group	3 To—	4 Difference in distance	5 Differential per ton	6 Reference to I. C. C. decisions: Volume	7 Reference to I. C. C. decisions: Page
1	Southern Illinois	Du Quoin	Chicago, Ill	50	10	128	265
2	Brazil-Clinton	Danville	Chicago, Ill	50	20	128	265
3	Group 9	Belleville	East St. Louis, Ill	51	25	161	371
4	Princeton	Springfield	Chicago, Ill	52	12	128	265
5	Belleville	Centralia	Chicago, Ill	52	20	128	265
6	Linton-Sullivan	Fulton-Peoria	Chicago, Ill	53	10	128	265
7	Group 14	Belleville	East St. Louis, Ill	55	7	161	371
8	Group 8	Belleville	East St. Louis, Ill	56	19	161	371
9	Linton-Sullivan	Du Quoin	Chicago, Ill	59	20	128	265
10	Boonville	Linton-Sullivan	Chicago, Ill	60	15	128	265
11	Group 15	Belleville	East St. Louis, Ill	60	21	161	371
12	Brazil-Clinton	Centralia	Chicago, Ill	61	10	128	265
13	Evansville	Linton-Sullivan	Chicago, Ill	61	30	128	265
14	Fulton-Peoria	Northern Illinois	Chicago, Ill	62	20	128	265
15	Princeton	Southern Illinois	Chicago, Ill	63	18	128	265
16	Du Quoin	Springfield	Chicago, Ill	65	20	128	265
17	Boonville	Springfield	Chicago, Ill	66	15	128	265
18	Linton-Sullivan	Belleville	Chicago, Ill	67	20	128	265
19	Evansville	Springfield	Chicago, Ill	67	30	128	265
20	Centralia	Fulton-Peoria	Chicago, Ill	68	10	128	265
21	Brazil-Clinton	Northern Illinois	Chicago, Ill	69	30	128	265
22	Group 16	Belleville	East St. Louis, Ill	70	23	161	371
23	Total			1,317	395		
	Average			60	18		
24	Evansville	Western Kentucky	Chicago, Ill	83	35	128	265
25	Boonville	Western Kentucky	Chicago, Ill	84	50	128	265
26	Du Quoin	Western Kentucky	Chicago, Ill	85	45	128	265
27	Springfield	Danville	Chicago, Ill	90	30	128	265
28	Group 13	Belleville	East St. Louis, Ill	91	29	161	371
29	Princeton	Brazil-Clinton	Chicago, Ill	92	22	128	265
30	Southern Illinois	Centralia	Chicago, Ill	94	30	128	265
31	Linton-Sullivan	Danville	Chicago, Ill	96	30	128	265
32	Princeton	Western Kentucky	Chicago, Ill	98	53	128	265
33	Princeton	Fulton-Peoria	Chicago, Ill	99	32	128	265
34	Brazil-Clinton	Du Quoin	Chicago, Ill	105	30	128	265
35	Boonville	Brazil-Clinton	Chicago, Ill	106	25	128	265
36	Evansville	Brazil-Clinton	Chicago, Ill	107	40	128	265
37	Linton-Sullivan	Southern Illinois	Chicago, Ill	109	30	128	265
38	Springfield	Northern Illinois	Chicago, Ill	109	40	128	265
39	Centralia	Danville	Chicago, Ill	111	30	128	265
40	Du Quoin	Fulton-Peoria	Chicago, Ill	112	30	128	265
41	Boonville	Fulton-Peoria	Chicago, Ill	113	25	128	265
42	Brazil-Clinton	Belleville	Chicago, Ill	113	30	128	265
43	Evansville	Fulton-Peoria	Chicago, Ill	114	40	128	265
44	Southern Illinois	Springfield	Chicago, Ill	115	30	128	265
45	Linton-Sullivan	Northern Illinois	Chicago, Ill	115	40	128	265
46	Belleville	Fulton-Peoria	Chicago, Ill	120	30	128	265
47	Total			2,361	766		
	Average			103	33		

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Exhibit 27, Waffle

Statement showing distances from southern Illinois to Rockford, Illinois

Origin line and billing points	Route	Miles	
		All points on all lines	Each billing point used but once
C. & E. I. Ry.:			
1. Benton	Momence, C., M., St. P. & P. R. R.	368.7	
2. Johnston City		381.4	
3. Marion		387.3	
4. Orient		379.5	
5. Spillerton		384.7	384.7
6. West Frankfort		375.7	
Total		2,277.3	384.7
Average		379.6	384.7
C., B. & Q. R. R.:			
1. Christopher	Mendota, C., M., St. P. & P. R. R.	381.6	
2. Christopher mine no. 16		375.1	320.9
3. Christopher mine no. 19		379.6	325.4
4. Christopher mine no. 20		394.5	
5. Energy mine no. 5		390.5	
6. Freeman		390.5	336.3
7. Freeman mine		392.5	
8. Herrin		394.4	
9. Jeffries		396.4	
10. Mine no. 22		372.6	372.6
11. Orient		392.5	
12. Royalton		391.5	
13. Sesser		373.3	373.3
14. West Frankfort		392.3	
15. West Frankfort mine		396.3	396.3
16. West Frankfort mine no. 24		399.6	399.6
17. Zeigler		387.5	
Total		6,600.7	2,524.4
Average		388.3	360.6
271 C., C., C. & St. L. Ry.:			
1. Carrier Mills	Danville, N. Y. C.; Momence, C., M., St. P. & P. R. R.	406.0	406.0
2. Eldorado		391.5	
3. Harco		409.4	409.4
4. Harrisburg		399.0	399.0
5. Ledford		402.7	402.7
6. Norris City		378.4	378.4
7. Wasson Jct		407.2	407.2
Total		2,794.2	2,402.7
Average		399.2	400.5
I. C. R. R.:			
1. Benton	Mendota, C., M., St. P. & P. R. R.	321.1	321.1
2. Birkner's Spur		325.5	325.5
3. Buckner		315.6	315.6
4. Cambria		329.5	329.5
5. Carterville		332.0	332.0
6. Christopher		313.4	313.4
7. Christopher mine no. 20		322.2	322.2
8. Clifford		331.1	331.1
9. Eldorado		352.5	352.5
10. Energy no. 5		334.8	334.8
11. Freeman mine		324.6	324.6
12. Freeman mine no. 1		325.1	325.1
13. Freeman mine no. 2		326.3	326.3
14. Galatia		342.2	342.2
15. Herrin		326.0	326.0
16. Jeffries		328.9	328.9
17. Johnston City		332.3	332.3
18. Marion		340.6	340.6
19. New Monarch mine		327.0	327.0
20. Oraville		327.0	327.0
21. Orient		332.3	332.3
22. Royalton		322.6	322.6
23. Vergennes		324.5	324.5
24. West Frankfort		329.9	329.9
25. West Frankfort mine no. 18		327.9	327.9
272 26. Zeigler		318.1	318.1
Total		8,533.0	8,533.0
Average		328.2	328.2

Statement showing distances from southern Illinois to Rockford, Illinois—Continued

Origin line and billing points	Route	Miles: All points on all lines	Miles: Each billing point used but once
M. P. R. R.:			
1. Bento	Benton, C. & E. I. Ry.; Chicago, C., M., St. P. & P. R. R.	389.7	
2. Bush-Hurst		406.1	406.1
3. Clifford		409.9	
4. Herrin		412.9	
5. Johnston City		420.2	
6. Royalton		405.0	
7. Sincerity mine		418.7	418.7
8. Zeigler		400.2	
Total		3,262.7	824.8
Average		407.8	412.4
M. P. R. R. (old M. & E. R. R.):			
1. Black Briar no. 2	Marion, I. C. R. R.; Mendota, C., M., St. P. & P. R. R.	345.0	345.0
2. Franco no. 2		345.8	345.8
3. Franco no. 3		348.4	348.4
4. Keystone mine		346.6	346.6
5. Orchard mine		346.5	346.5
6. Pittsburg		346.5	346.5
Total		2,078.8	2,078.8
Average		346.5	346.5

RECAPITULATION

Origin line	All billing points on all lines: No. of points	All billing points on all lines: Total miles	All billing points on all lines: Average miles	Each billing point used but once: No. of points	Each billing point used but once: Total miles	Each billing point used but once: Average miles	Tariff authority
C. & E. I. Ry	6	2,277.3	379.6	1	384.7	384.7	I. C. C. 263.
C., B. & Q. R. R.	17	6,600.7	388.3	7	2,524.4	360.6	I. C. C. 17994.
C., C., C. & St. L. Ry.	7	2,794.2	399.2	6	2,402.7	400.5	I. C. C. 8513.
I. C. R. R.	26	8,533.0	[1] 328.2	26	8,533.0	[1] 328.2	I. C. C. E-1710.
M. P. R. R.	8	3,262.7	407.8	2	824.8	412.4	I. C. C. A-7899.
M. P. R. R. (old M. & E.).	6	2,078.8	346.5	6	2,078.8	346.5	I. C. C. R. R., I. C. C. E-1710.
	70	25,546.7	365.0	48	16,768.4	349.3	

[1] Short tariff route.

273 *Statement showing distances from Brazil-Clinton, Indiana, to Rockford, Illinois*

Origin line and billing points	Route	Miles: All points on all lines	Miles: Each billing point used but once
B. & O. R. R.:			
1. Brazil	West Dana, C. M., St. P. & P. R. R.	256.3	
2. Coal Bluff		248.4	248.4
3. Coxville		241.9	241.9
4. Mecca		235.9	235.9
5. Rosedale		244.0	244.0
Total		1,226.5	970.2
Average		245.3	242.6
C. & E. I. Ry.:			
1. Brazil	Momence, C., M., St. P. & P. R. R.	254.8	254.8
2. Clinton		233.6	233.6
3. Ehrmandale		248.0	248.0
4. Newport		217.6	217.6
5. Terre Haute		248.2	248.0
Total		1,202.2	1,202.2
Average		240.4	240.4
C., M., St. P. & P. R. R.:			
1. Blanchard	Direct	230.1	230.1
2. Bradshaw		234.2	234.2
3. St. Bernice		226.7	226.7
4. Terre Haute		256.2	
5. West Clinton		228.0	228.0
Total		1,175.2	919.0
Average		235.0	229.8
C., C., C. & St. L. Ry.:			
1. Carbon	Danville, N. Y. C., Momence, C., M., St. P. & P. R. R.	282.9	282.9
2. Fontanet		275.4	275.4
3. Griff		263.5	263.5
4. St. Marys of the Woods		260.1	260.1
5. Terre Haute		264.1	
Total		1,346.0	1,081.9
Average		269.2	270.5
274 Penna. R. R.:			
1. Asherville	Chicago, I. C. R. R.	341.7	341.7
2. Brazil		333.7	
3. Center Point		345.7	345.7
4. Harmony		337.7	337.7
5. Rockville		296.7	296.7
6. Seeleyville		326.7	326.7
7. Staunton		330.7	330.7
8. Stearleys		343.7	343.7
9. Terre Haute		318.7	
10. West Terre Haute		321.7	321.7
Total		3,297.0	2,644.6
Average		329.7	330.6

RECAPITULATION

Origin line	All billing points on all lines: No. of points	All billing points on all lines: Total miles	All billing points on all lines: Average miles	Each billing point used but once: No. of points	Each billing point used but once: Total miles	Each billing point used but once: Average miles	Tariff authority
B. & O. R. R.	5	1,226.5	245.3	4	970.2	242.6	B.&O., I. C. C., W.L., 9794.
C. & E. I. Ry.	5	1,202.2	240.4	5	1,202.2	240.4	C. & E. I., I. C. C., 293.
C., M., St. P. & P. R. R.	5	1,175.2	[1] 235.0	4	919.0	229.8	C., M., St. P. & P., I. C. C., B-5133.
C., C., C. & St. L. Ry.	5	1,346.0	269.2	4	1,081.9	270.5	C., C., C. & St. L., I. C. C., 8513.
Penna. R. R.	10	3,297.0	329.7	8	2,644.6	330.6	Penna., I. C. C., 929.
	30	8,246.9	274.9	25	6,817.9	272.7	

[1] Short tariff route.

275 *Statement showing distances from Linton-Sullivan, Indiana, to Rockford, Illinois*

Origin line and billing points	Route	Miles: All points on all lines	Miles: Each billing point used but once
C. & E. I. Ry.:			
1. Carlisle	Momence, C., M., St. P. & P. R. R.	284.0	284.0
2. Delcarbo		270.8	270.8
3. Farmersburg		263.6	263.6
4. Hamilton		275.2	275.2
5. Hocking		266.3	266.3
6. Hymera		274.9	274.9
7. Jackson Hill		274.0	274.0
8. Kolsem		270.7	270.7
9. Mildred		271.5	271.5
10. Paxton		280.0	280.0
11. Peerless		273.1	273.1
12. Pimento		259.7	259.7
13. Reliance		270.9	270.9
14. Seifert		262.9	262.9
15. Shelburn		269.1	269.1
16. Standard		267.5	267.5
17. Sullivan		274.4	274.4
Total		4,608.6	4,608.6
Average		271.1	271.1
C. & I. L. Ry.:			
1. Andromeda	Shelby, N. Y. C.; Momence, C., M., St. P. & P. R. R.	333.3	333.3
2. Cass		326.8	
3. Clay City		306.4	
4. Gilmore		324.0	324.0
5. Howesville		314.5	314.5
6. Little Giant		329.7	329.7
7. Midland		320.7	320.7
8. Owensburg		350.8	350.8
9. Patricksburg		297.8	297.8
10. Rainbow		330.1	330.1
11. Rowlands		316.6	316.6
276 12. Stewards		299.9	299.9
13. Victoria		325.8	
Total		4,176.4	3,217.4
Average		321.3	321.7
C., M., St. P. & P. R. R.:			
1. Blackhawk	Direct	262.0	262.0
2. Coalmont		271.0	271.0
3. Hymera		270.8	270.8
4. Illene		290.4	290.4
5. Keller		258.3	258.3
6. Latta		274.8	274.8
7. Linton		283.1	283.1
8. Sullivan		280.5	
9. Vicksburg		278.7	278.7
Total		2,469.6	2,189.1
Average		274.4	273.6
C., C., C. & St. L. Ry.:			
1. Clay City	Danville, N. Y. C.; Momence, C., M., St. P. & P. R. R.	290.5	290.5
2. Daggett		296.7	296.7
3. Hubbell		299.4	299.4
4. Riley		274.5	274.5
5. Saline City		284.4	284.4
Total		1,445.5	1,445.5
Average		289.1	289.1

Statement showing distances from Linton-Sullivan, Indiana, to Rockford, Illinois—Continued

Origin line and billing points	Route	Miles: All points on all lines	Miles: Each billing point used but once
I. C. R. R.:			
1. Cass	Mendota, C., M., St. P. & P. R. R.	307.7	307.7
2. Dugger		309.6	309.6
3. Linton		315.4	
4. Sullivan		300.7	
5. Victoria		313.1	313.1
Total		1,546.5	930.4
Average		309.3	310.1
277 Penna. R. R.:			
1. Bicknell	Chicago, I. C. R. R.	391.7	391.7
2. Westphalia		383.7	383.7
Total		775.4	775.4
Average		387.7	387.7

RECAPITULATION

Origin line	All billing points on all lines: No. of points	All billing points on all lines: Total miles	All billing points on all lines: Average miles	Each billing point used but once: No. of points	Each billing point used but once: Total miles	Each billing point used but once: Average miles	Tariff authority
C. & E. I. Ry	17	4,608.6	[1]271.1	17	4,608.6	271.1	C. & E. I., I. C. C. 263.
C. & I. L. Ry	13	4,176.4	321.3	10	3,217.4	321.7	C. & I. L., I. C. C. 4264.
C., M., St. P. & P. R. R.	9	2,469.6	274.4	8	2,189.1	273.6	C., M., St. P. & P., I. C. C. B-5133.
C., C., C. & St. L. Ry.	5	1,445.5	289.1	5	1,445.5	289.1	C., C., C. & St. L., I. C. C. 8513.
I. C. R. R.	5	1,546.5	309.3	3	930.4	310.1	I. C., I. C. C. E-1710.
Penna. R. R.	2	775.4	387.7	2	775.4	387.7	Penna., I. C. C. 929.
	51	15,022.0	294.5	45	13,166.4	292.6	

[1] Short tariff route.

278 *Statement showing distances from Princeton, Indiana, to Rockford, Illinois*

Origin line and billing points	Route	Miles: All points on all lines	Miles: Each billing point used but once
A. W. & W. Ry.:			
1. Cato	Oakland City Jct., Sou. Ry., Browns, I. C. R. R.	387.3	387.3
2. Enosville		382.2	382.2
3. Globe		383.1	383.1
Total		1,152.6	1,152.6
Average		384.2	384.2
B. & O. R. R.: 1. Wheatland	Bando, C. & N. W. Ry	405.1	405.1
C. & E. I. Ry.:			
1. Fort Branch	Momence, C. M. St. P. & P. R. R.	337.4	337.4
2. King		333.5	333.5
3. Princeton		329.8	329.8
Total		1,000.7	1,000.7
Average		333.6	333.6
C. C. C. & St. L. Ry.:			
1. Buckskin	Danville, N. Y. C., Momence, C. M. St. P. & P. R. R.	379.3	379.3
2. Coal Spur		378.0	378.0
3. Coe		377.4	377.4
4. Elberfeld		384.3	384.3
5. Little		365.7	365.7
6. Maysville		344.2	344.2
7. Oakland City		370.7	----------
8. Oakland City Jct		374.4	----------
9. Petersburg		358.3	358.3
10. Rogers		353.4	353.4
11. Somerville		375.3	375.3
12. Washington		344.4	344.4
Total		4,405.4	3,660.3
Average		367.1	366.0
279 Sou. Ry.:			
1. Ayershire	Princeton, C. & E. I., Chicago, C. M. St. P. & P. R. R.	370.5	370.5
2. Ayershire mine no. 6		370.7	370.7
3. Ayershire mine no. 7		371.0	371.0
4. Ayershire mine no. 8		372.3	372.3
5. Liberty mine		359.9	359.9
6. Francisco		358.4	358.4
7. Huntingburg		388.1	388.1
8. Jasper		394.8	394.8
9. Oakland City		364.0	364.0
10. Oakland City Jct		365.6	365.6
11. Winslow		372.3	372.3
Total		4,087.6	4,087.6
Average		371.6	371.6

RECAPITULATION

Origin line	All billing points on all lines: No. of points	All billing points on all lines: Total miles	All billing points on all lines: Average miles	Each billing point used but once: No. of points	Each billing point used but once: Total miles	Each billing point used but once: Average miles	Tariff authority
A. W. & W. Ry	3	1,152.6	384.2	3	1,152.6	384.2	Sou., I. C. C., C-2150.
B. & O. R. R.	1	405.1	405.1	1	405.1	405.1	B. & O., I. C. C., W. L. 9794.
C. & E. I. Ry	3	1,000.7	333.6	3	1,000.7	333.6	C. & E. I., I. C. C. 263.
C. C. C. & St. L. Ry	12	4,405.4	367.1	10	3,660.3	366.0	C. C. C. & St. L., I. C. C. 8513.
Sou. Ry	11	4,087.6	371.6	11	4,087.6	371.6	Sou., I. C. C., C-2150.
	30	11,051.4	368.4	28	10,306.3	368.1	

[1] Short tariff route.

280 *Statement showing distances from Boonville, Indiana, to Rockford, Illinois*

Origin line and billing points	Route	Miles	
		All points on all lines	Each billing point used but once
Sou. Ry.:			
1. Boonville	Princeton, C. & E. I., Chicago Heights, E. J. & E., West Chicago, C. & N. W. Ry.	417.4	417.4
2. Bryan mine		423.6	423.6
3. Center mine		420.5	420.5
4. Chandler		422.6	422.6
5. Erie Canal mine		423.2	423.2
6. Evanston		411.7	411.7
7. Korff's mine		420.4	420.4
8. Lincoln City		400.8	400.8
9. Oak Knob mine		402.3	402.3
10. Pigeon Creek mine		418.5	418.5
11. Sunlight mine no. 4		414.1	414.1
12. Sunlight mine no. 8		417.7	417.7
Total		4,992.8	4,992.8
Average		416.1	416.1

281 *Exhibit 28*

Statement showing distances from southern Illinois to Freeport, Illinois

Origin line and billing points	Route	Miles	
		All points on all lines	Each billing point used but once
C. & E. I. Ry.:			
1. Benton	Sullivan, I. C. R. R.	331.4	
2. Johnston City		344.1	
3. Marion		350.0	
4. Orient		342.2	
5. Spillerton		347.5	347.5
6. West Frankfort		338.4	
Total		2,053.6	347.5
Average		342.3	347.5
C., B. & Q. R. R.:			
1. Christopher	Mendota, C., M., St. P. & P. R. R.	424.0	
2. Christopher mine no. 16		417.5	417.5
3. Christopher mine no. 19		422.0	422.0
4. Christopher mine no. 20		436.9	
5. Energy mine no. 5		432.9	
6. Freeman		432.9	432.9
7. Freeman mine		434.9	
8. Herrin		436.8	
9. Jeffries		438.8	
10. Mine no. 22		415.0	415.0
11. Orient		434.8	
12. Royalton		433.9	
13. Sesser		425.7	425.7
14. West Frankfort		434.7	
15. West Frankfort mine		438.7	438.7
16. West Frankfort mine no. 24		442.0	442.0
17. Zeigler		429.9	
Total		7,331.4	2,993.8
Average		431.3	427.7

Statement showing distances from southern Illinois to Freeport, Illinois—Continued

Origin line and billing points	Route	Miles: All points on all lines	Miles: Each billing point used but once
282 C., C., C. & St. L. Ry.:			
1. Carrier Mills	Bloomington, I. C. R. R.	417.5	417.5
2. Eldorado		403.0	
3. Harco		420.9	420.9
4. Harrisburg		410.5	410.5
5. Ledford		414.2	414.2
6. Norris City		389.9	389.9
7. Wasson Jct		418.7	418.7
Total		2,874.7	2,471.7
Average		410.9	412.0
I. C. R. R.:			
1. Benton	Direct	330.3	330.3
2. Birkner's Spur		334.7	334.7
3. Buckner		324.8	324.8
4. Cambria		338.7	338.7
5. Carterville		341.2	341.2
6. Christopher		322.7	322.7
7. Christopher mine no. 20		331.4	331.4
8. Clifford		340.3	340.3
9. Eldorado		361.7	36.17
10. Energy no. 5		344.0	344.0
11. Freeman mine		333.8	333.8
12. Freeman mine no. 1		334.3	334.3
13. Freeman mine no. 2		335.5	335.5
14. Galatia		351.4	351.4
15. Herrin		335.3	335.3
16. Jeffries		338.1	338.1
17. Johnston City		341.6	341.6
18. Marion		349.9	349.9
19. New Monarch mine		336.2	336.2
20. Oraville		336.2	336.2
21. Orient		341.5	341.5
22. Royalton		331.8	331.8
23. Vergennes		333.7	333.7
24. West Frankfort		339.2	339.2
283 25. West Frankfort mine no. 18.		337.1	337.1
26. Zeigler		327.4	327.4
Total		8,782.8	8,782.8
Average		337.8	337.8
M. P. R. R.:			
1. Benton	East St. Louis, Wab., Staunton, C., & N. W.	471.3	
2. Bush-Hurst		454.9	454.9
3. Clifford		458.7	
4. Herrin		461.7	
5. Johnston City		469.0	
6. Royalton		458.0	
7. Sincerity mine		467.5	467.5
8. Zeigler		463.4	
Total		3,704.5	922.4
Average		463.1	461.2
M. P. R. R. (Old M. & E. R. R.):			
1. Black Briar no. 2	Marion, I. C. R. R.	354.3	354.3
2. Franco no. 2		355.1	355.1
3. Franco no. 3		357.7	357.7
4. Keystone mine		355.9	355.9
5. Orchard		355.8	355.8
6. Pittsburg		355.8	355.8
Total		2,134.6	2,134.6
Average		355.8	355.8

Statement showing distances from southern Illinois to Freeport, Illinois—Continued

RECAPITULATION

Origin line	All billing points on all lines			Each billing point used but once			Tariff authority
	No. of points	Total miles	Average miles	No. of points	Total miles	Average miles	
C. & E. I. Ry.	6	2,053.6	342.3	1	347.5	347.5	C. & E. I., I. C. C. 263.
C., B. & Q. R. R.	17	7,331.4	431.3	7	2,993.8	427.7	C., B. & Q., I. C. C. 17994.
C., C., C. & St. L. Ry.	7	2,874.7	410.9	6	2,471.7	412.0	C., C., C. & St. L., I. C. C. 8513.
I. C. R. R.	26	8,782.8	[1] 337.8	26	8,782.8	[1] 337.8	I. C., I. C. C. E-1710.
M. P. R. R.	8	3,704.5	463.1	2	922.4	461.2	M. P., I. C. C. A-7899.
M. P. R. R. (Old M. & E.).	6	2,134.6	355.8	6	2,134.6	355.8	I. C., I. C. C. E-1710.
	70	26,881.6	384.0	48	17,652.8	367.8	

[1] Short tariff route.

284 *Statement showing distances from Brazil-Clinton, Indiana, to Freeport, Ill.*

Origin line and billing points	Route	Miles	
		All points on all lines	Each billing point used but once
F. & O. R. R.:			
1. Brazil	Decatur, I. C. R. R.	295.3	295.3
2. Coal Bluff		287.4	287.4
3. Coxville		280.9	280.9
4. Mecca		274.9	274.9
5. Rosedale		283.0	283.0
Total		1,421.5	1,421.5
Average		284.3	284.3
C. & E. I. Ry.:			
1. Brazil	Momence, C., M., St. P. & P. R. R.	297.2	----------
2. Clinton		276.0	276.0
3. Ehrmandale		290.4	290.4
4. Newport		260.0	260.0
5. Terre Haute		290.6	----------
Total		1,414.2	826.4
Average		282.8	275.5
C., M., St. P. & P. R. R.:			
1. Blanford	De Kalb, C. & N. W. Ry.	262.5	262.5
2. Bradshaw		266.6	266.6
3. St. Bernice		259.1	259.1
4. Terre Haute		288.6	288.6
5. West Clinton		260.4	260.4
Total		1,337.2	1,337.2
Average		267.4	267.4
C., C., C. & St. L. Ry.:			
1. Carbon	Danville, N. Y. C., Gibson, I. H. B.; Proviso, C. & N. W. Ry.	320.4	320.4
2. Fontanet		312.9	312.9
3. Griff		301.0	301.0
4. St. Marys of the Woods		297.6	297.6
5. Terre Haute		301.6	----------
Total		1,533.5	1,231.9
Average		306.7	308.0
285 Penna. R. R.:			
1. Asherville	Chicago, I. C. R. R.	369.4	369.4
2. Brazil		361.4	----------
3. Center Point		373.4	373.4
4. Harmony		353.4	365.4
5. Rockville		324.4	324.4
6. Seeleyville		354.4	354.4
7. Staunton		358.4	358.4
8. Stearleys		371.4	371.4
9. Terre Haute		346.4	----------
10. West Terre Haute		349.4	349.4
Total		3,574.0	2,866.2
Average		357.4	358.3

Statement showing differences from southern Illinois to Freeport, Illinois—Con.

RECAPITULATION

Origin line	All billing points on all lines			Each billing point used but once			Tariff authority
	No. of points	Total miles	Average miles	No. of points	Total miles	Average miles	
B. & O. R. R.	5	1,421.5	284.3	5	1,421.5	284.3	B. & O., I. C. C., W. L., 9794.
C. & E. I. Ry.	5	1,414.2	282.8	3	826.4	275.5	C. & E. I., I. C. C., 263.
C., M., St. P. & P. R. R.	5	1,337.2	[1] 267.4	5	1,337.2	[1] 267.4	C., M., St. P. & P., I. C. C., B-5133.
C., C., C. & St. L. Ry.	5	1,533.5	306.7	4	1,231.9	308.0	C., C., C. & St. L., I. C. C., 8513.
Penna. R. R.	10	3,574.0	357.4	8	2,866.2	358.3	Penna., I. C. C., 929.
	30	9,280.4	309.3	25	7,683.2	307.3	

[1] Short tariff route.

286 *Statement showing distances from Linton-Sullivan, Indiana, to Freeport, Illinois*

Origin line and billing points	Route	Miles	
		All points on all lines	Each billing point used but once
C. & E. I. Ry.:			
1. Carlisle	Momence, C., M., St. P. & P. R. R.	326.4	326.4
2. Del Carbo		313.2	313.2
3. Farmersburg		306.0	306.0
4. Hamilton		317.6	317.6
5. Hocking		308.7	308.7
6. Hymera		317.3	317.3
7. Jackson Hill		316.4	316.4
8. Kolsem		313.1	313.1
9. Mildred		313.9	313.9
10. Paxton		322.4	322.4
11. Peerless		315.5	315.5
12. Pimento		302.1	302.1
13. Reliable		313.3	313.3
14. Seifert		305.3	305.3
15. Shelburn		311.5	311.5
16. Standard		309.9	309.9
17. Sullivan		316.8	----------
Total		5,329.4	5,012.6
Average		313.5	313.3
C. & I. L. Ry.:			
1. Andromeda	Hammond, I. H. B.; Bensenville Yard, C., M., St. P. & P. R. R.	378.3	378.3
2. Cass		371.8	----------
3. Clay City		351.4	----------
4. Gilmore		369.0	369.0
5. Howesville		359.5	359.5
6. Little Giant		374.7	374.7
7. Midland		365.7	365.7
8. Owensburg		395.8	395.8
9. Patricksburg		342.8	342.8
10. Rainbow		375.1	375.1
11. Rowlands		361.6	361.6
12. Stewards		344.9	344.9
13. Victoria		370.8	----------
Total		4,761.4	3,667.4
Average		366.3	366.7

Statement showing distances from Linton-Sullivan, Indiana, to Freeport, Illinois—Continued

Origin line and billing points	Route	Miles: All points on all lines	Miles: Each billing point used but once
C., M., St. P. & P. R. R.:			
1. Blackhawk	De Kalb, C. & N. W. Ry	294.4	294.4
2. Coalmont		303.4	303.4
3. Hymera		303.2	303.2
4. Illene		322.8	322.8
5. Keller		290.7	290.7
6. Latta		307.2	307.2
7. Linton		315.5	315.5
8. Sullivan		312.9	----
9. Vicksburg		311.1	311.1
Total		2,761.2	2,448.3
Average		306.8	306.0
C., C., C. & St. L. Ry.:			
1. Clay City	Danville, N. Y. C.; Gibson, I. H. B.; Proviso, C. & N. W. Ry.	328.0	328.0
2. Daggett		334.2	334.2
3. Hubbell		336.9	336.9
4. Riley		312.0	312.0
5. Saline City		321.9	321.9
Total		1,633.0	1,633.0
Average		326.6	326.6
I. C. R. R.:			
1. Cass	Direct	316.9	316.9
2. Dugger		318.9	318.9
3. Linton		324.6	----
4. Sullivan		209.6	209.6
5. Victoria		322.4	322.4
Total		1,492.4	1,167.8
Average		298.5	292.0
288 Penna. R. R.:			
1. Bicknell	Chicago, I. C. R. R.	419.4	419.4
2. Westphalia		411.4	411.4
Total		830.8	830.8
Average		415.4	415.4

RECAPITULATION

Origin line	All billing points on all lines: No. of points	Total miles	Average miles	Each billing point used but once: No. of points	Total miles	Average miles	Tariff authority
C. & E. I. Ry.	17	5,329.4	313.5	16	5,012.6	313.3	C. & E. I., I. C. C. 293.
C. & I. L. Ry.	13	4,761.4	366.3	10	3,667.4	367.7	C. & I. L., I. C. C. 4264.
C., M., St. P. & P. R. R.	9	2,761.2	306.8	8	2,448.3	306.0	C., M., St. P. & P., I. C. C. B-5133.
C., C., C. & St. L. Ry.	5	1,633.0	326.6	5	1,633.0	326.6	C., C., C. & St. L., I. C. C. 8513.
I. C. R. R.	5	1,492.4	[1] 298.5	4	1,167.8	[1] 292.0	I. C., I. C. C. E-1710.
Penna. R. R.	2	830.8	415.4	2	830.8	415.4	Penna., I. C. C. 929.
	51	16,808.2	329.6	45	14,759.9	328.0	

[1] Short tariff route.

289 *Statement showing distances from Princeton, Indiana, to Freeport, Illinois*

Origin line and billing points	Route	Miles: All points on all lines	Miles: Each billing point used but once
A. W. & W. Ry.:			
1. Cato	Oakland City, Jct., Sou. Ry., Browns, I. C. R. R.	361.5	361.5
2. Enosville		356.4	356.4
3. Globe		357.3	357.3
Total		1,075.2	1,075.2
Average		358.4	358.4
B. & O. R. R.: 1. Wheatland	Bando, C. & N. W. Ry	433.1	433.1
C. & E. I. Ry.:			
1. Fort Branch	Momence, C., M., St. P. & P. R. R.	379.8	379.8
2. King		375.9	375.9
3. Princeton		372.2	372.2
Total		1,127.9	1,127.9
Average		376.0	376.0
C. C. C. & St. L. Ry.:			
1. Buckskin	Danville, N. Y. C., Gibson, I. H. B., Proviso, C. & N. W. Ry.	416.8	416.8
2. Coal Spur		415.5	415.5
3. Coe		414.9	414.9
4. Elberfeld		421.8	421.8
5. Little		403.2	403.2
6. Maysville		381.7	381.7
7. Oakland City		408.2	
8. Oakland City Jct		412.0	
9. Petersburg		396.3	396.3
10. Rogers		390.9	390.9
11. Somerville		412.8	412.8
12. Washington		381.9	381.9
Total		4,856.0	4,035.8
Average		404.7	403.6
290 Sou. Ry:			
1. Ayershire	Browns, I. C. R. R.	354.9	354.9
2. Ayershire mine no. 6		355.1	355.1
3. Ayershire mine no. 7		355.4	355.4
4. Ayershire mine no. 8		356.7	356.7
5. Liberty mine		344.3	344.3
6. Francisco		342.8	342.8
7. Huntingburg		372.5	372.5
8. Jasper		379.2	379.2
9. Oakland City		348.4	348.4
10. Oakland City Jct		350.0	350.0
11. Winslow		356.7	356.7
Total		3,916.0	3,916.0
Average		356.0	356.0

RECAPITULATION

Origin line	All billing points on all lines: No. of points	Total miles	Average miles	Each billing point used but once: No. of points	Total miles	Average miles	Tariff authority
A. W. & W. Ry	3	1,075.2	358.4	3	1,075.2	358.4	Sou., I. C. C., C-2150.
B. & O. R. R	1	433.1	433.1	1	433.8	433.1	B. & O., I. C. C., W. L. 9794.
C. & E. I. Ry	3	1,127.9	376.0	3	1,127.9	376.0	C. & E. I., I. C. C. 263.
C. C. C. & St. L. Ry	12	4,856.0	404.7	10	4,035.8	403.6	C. C. C. & St. L., I. C. C. 8513.
Sou. Ry	11	3,916.0	[1] 356.0	12	3,938.7	[1] 356.0	Sou., I. C. C., C-2150.
	30	11,408.2	380.3	28	10,588.0	378.1	

[1] Short tariff route.

291 *Statement showing distances from Boonville, Indiana, to Freeport, Illinois*

Origin line and billing points	Route	Miles	
		All points on all lines	Each billing point used but once
Sou. Ry.:			
1. Boonville	Browns, I. C. R. R.	403.0	403.0
2. Bryan mine		409.2	409.2
3. Center mine		406.1	406.1
4. Chandler		408.2	408.2
5. Erie Canal mine		408.8	408.8
6. Evanston		397.3	397.3
7. Korff's mine		406.0	406.0
8. Lincoln City		386.4	386.4
9. Oak Knob mine		387.9	387.9
10. Pigeon Creek mine		404.1	404.1
11. Sunlight mine no. 4		399.7	399.7
12. Sunlight mine no. 8		403.3	403.3
Total		4,820.0	4,820.0
Average		401.7	401.7

292 *Exhibit 29*

Statement showing distances from southern Illinois to De Kalb, Illinois

Origin line and billing points	Route	Miles	
		All points on all lines	Each billing point used but once
C. & E. I. Ry.:			
1. Benton	Momence, C. M. St. P. & P. R. R.	331.9	
2. Johnston City		344.6	
3. Marion		350.5	
4. Orient		342.7	
5. Spillerton		347.9	347.9
6. West Frankfort		338.9	
Total		2,056.5	347.9
Average		342.8	347.9
C. B. & Q. R. R.:			
1. Christopher	Virden, C. & N. W. Ry.	329.6	
2. Christopher mine no. 16		323.1	323.1
3. Christopher mine no. 19		327.6	327.6
4. Christopher mine/o. 20		342.5	
5. Energy mine no. 5		338.5	
6. Freeman		338.5	338.5
7. Freeman mine		340.5	
8. Harrin		342.4	
9. Jeffries		344.4	
10. Mine no. 22		320.6	320.6
11. Orient		340.5	
12. Royalton		339.5	
13. Sesser		321.3	321.3
14. West Frankfort		340.3	
15. West Frankfort mine		344.3	344.3
16. West Frankfort mine no. 24		347.6	347.6
17. Zeigler		335.5	
Total		5,716.7	2,323.0
Average		336.3	331.9

Statement showing distances from southern Illinois to De Kalb, Illinois—Continued

Origin line and billing points	Route	Miles: All points on all lines	Miles: Each billing point used but once
293 C. C. C. & St. L. Ry.:			
1. Carrier Mills	Danville, N. Y. C., Momence, C. M. St. P. & P. R. R.	369.2	369.2
2. Eldorado		354.7	
3. Harco		372.6	372.6
4. Harrisburg		362.2	362.2
5. Ledford		365.9	365.9
6. Norris City		341.6	341.6
7. Wasson Jct		370.4	370.4
Total		2,536.6	2,181.9
Average		362.4	363.7
I. C. R. R.:			
1. Benton	LaSalle, L. S. B. C., LaSalle Jct., C. & N. W. Ry.	303.6	303.6
2. Birkner's Spur		308.0	308.0
3. Buckner		298.1	298.1
4. Cambria		312.0	312.0
5. Carterville		314.5	314.5
6. Christopher		296.0	296.0
7. Christopher mine no. 20		304.7	304.7
8. Clifford		303.6	303.6
9. Eldorado		335.0	335.0
10. Energy no. 5		317.3	317.3
11. Freeman mine		307.1	307.1
12. Freeman mine no. 1		307.6	307.6
13. Freeman mine no. 2		308.8	308.8
14. Galatia		324.7	324.7
15. Herrin		308.6	308.6
16. Jeffries		311.4	311.4
17. Johnston City		314.9	314.9
18. Marion		323.2	323.2
19. New Monarch mine		309.5	309.5
20. Oraville		309.5	309.5
21. Orient		314.8	314.8
22. Royalton		305.1	305.1
23. Vergennes		307.0	307.0
24. West Frankfort		312.4	312.4
25. West Frankfort no. 18		310.4	310.4
294 26. Zeigler		300.7	300.7
Total		8,079.5	8,079.5
Average		310.8	310.8
M. P. R. R.:			
1. Benton	East St. Louis, Wab., Staunton, C. & N. W.	402.1	
2. Bush-Hurst		385.7	385.7
3. Clifford		389.5	
4. Herrin		392.5	
5. Johnston City		389.8	
6. Royalton		388.8	
7. Sincerity mine		398.3	398.3
8. Zeigler		394.2	
Total		3,150.9	784.0
Average		393.9	392.0
M. P. R. R. (old M. & E. R. R.):			
1. Black Briar no. 2	Marion, I. C.; LaSalle, L. S. B. C.; La Salle Jct., C. & N. W. Ry.	327.5	327.5
2. Franco no. 2		328.3	328.3
3. Franco no. 3		330.9	330.9
4. Keystone mine		329.1	329.1
5. Orchard		329.0	329.0
6. Pittsburg		329.0	329.0
Total		1,973.8	1,973.8
Average		329.0	329.0

Statement showing distances from southern Illinois to DeKalb, Illinois—Continued

RECAPTULATION

Origin line	All billing points on all lines			Each billing point used but once			Tariff authority
	No. of points	Total miles	Average miles	No. of points	Total miles	Average miles	
C. & E. I. Ry	6	2,056.5	342.8	1	347.9	347.9	C. & E. I., I. C. C. 263.
C. B. & Q. R. R	17	5,716.7	336.3	7	2,323.0	331.9	C. B. & Q., I. C. C. 17994.
C. C. C. & St. L. Ry	7	2,536.6	362.4	6	2,181.9	363.7	C. C. C. & St. L., I. C. C. 8513.
I. C. R. R	26	8,079.5	[1] 310.8	26	8,079.5	[1] 310.8	I. C., I. C. C. E-1710.
M. P. R. R	8	3,150.9	393.9	2	784.0	392.0	M. P., I. C. C. A-7899.
M. P. R. R. (old M. & E.)	6	1,973.8	329.0	6	1,973.8	329.0	I. C., I. C. C. E-1710.
	70	23,514.0	335.9	48	15,690.1	326.9	

[1] Short tariff route.

295 *Statement showing distances from Brazil-Clinton, Indiana to De Kalb, Illinois*

Origin line and billing points	Route	Miles	
		All points on all lines	Each billing point used but once
B. & O. R. R.:			
1. Brazil	West Dana, C. M. St. P. & P. R. R.	219.5	
2. Coal Bluff		211.6	211.6
3. Coxville		205.1	205.1
4. Mecca		199.1	199.1
5. Rosedale		207.2	207.2
Total		1,042.5	823.0
Average		208.5	205.8
C. & E. I. Ry.:			
1. Brazil	Momence, C. M. St. P. & P. R. R.	218.0	218.0
2. Clinton		196.8	196.8
3. Ehrmandale		211.2	211.2
4. Newport		180.8	180.8
5. Terre Haute		211.4	211.4
Total		1,018.2	1,018.2
Average		203.6	203.6
C. M. St. P. & P. R. R.:			
1. Blanford	Direct	193.3	193.3
2. Bradshaw		197.4	197.4
3. St. Bernice		189.9	189.9
4. Terre Haute		219.4	
5. West Clinton		191.2	191.2
Total		991.2	771.8
Average		198.2	193.0
C. C. C. & St. L. Ry.:			
1. Carbon	Danville, N. Y. C.; Momence, C. M. St. P. & P. R. R.	246.1	246.1
2. Fontanet		238.6	238.6
3. Griff		226.7	226.7
4. St. Marys of the Woods		223.3	223.3
5. Terre Haute		227.3	
Total		1,162.0	934.7
Average		232.4	234.7

Statement showing distances from Brazil-Clinton, Indiana to De Kalb, Illinois—Continued

Origin line and billing points	Route	Miles: All points on all lines	Miles: Each billing point used but once
296 Penna. R. R.:			
1. Asherville	Chicago, C. & N. W. Ry	313.5	313.5
2. Brazil		305.5	
3. Center Point		317.5	317.5
4. Harmony		309.5	309.5
5. Rockville		268.5	268.5
6. Seeleyville		298.5	298.5
7. Staunton		302.5	302.5
8. Stearleys		315.5	315.5
9. Terre Haute		290.5	
10. West Terre Haute		293.5	293.5
Total		3,015.0	2,419.0
Average		301.5	302.4

RECAPITULATION

Origin line	All billing points on all lines: No. of points	All billing points on all lines: Total miles	All billing points on all lines: Average miles	Each billing point used but once: No. of points	Each billing point used but once: Total miles	Each billing point used but once: Average miles	Tariff authority
B. & O. R. R.	5	1,042.5	208.5	4	823.0	205.8	B. & O., I. C. C., W. L. 9794.
C. & E. I. Ry.	5	1,018.2	203.6	5	1,018.2	203.6	C. & E. I., I. C. C. 263.
C. M. St. P. & P. R. R.	5	991.2	[1] 198.2	4	771.8	[1] 193.0	C. M. St. P. & P., I. C. C. B-5133.
C. C. C. & St. L. Ry.	5	1,162.0	232.4	4	934.7	234.7	C. C. C. & St. L., I. C. C. 8513.
Penna. R. R.	10	3,015.0	301.5	8	2,419.0	302.4	Penna., I. C. C. 929.
	30	7,228.9	241.0	25	5,966.7	238.7	

[1] Short tariff route.

297 *Statement showing distances from Linton-Sullivan, Indiana to De Kalb, Illinois*

Origin line and billing points	Route	Miles: All points on all lines	Miles: Each billing point used but once
C. & E. I. Ry.:			
1. Carlisle	Momence, C. M. St. P. & P. R. R.	247.2	247.2
2. Del Carbo		234.0	234.0
3. Farmersburg		226.8	226.8
4. Hamilton		238.4	238.4
5. Hocking		229.5	229.5
6. Hymera		238.1	238.1
7. Jackson Hill		237.2	237.2
8. Kolsem		233.9	233.9
9. Mildred		234.7	234.7
10. Paxton		243.2	243.2
11. Peerless		236.3	236.3
12. Pimento		222.9	222.9
13. Reliable		234.1	234.1
14. Seifert		226.1	226.1
15. Shelburn		232.3	232.3
16. Standard		230.7	230.7
17. Sullivan		237.6	237.6
Total		3,983.0	3,983.0
Average		234.3	234.3

Statement showing distances from Linton-Sullivan, Indiana, to De Kalb, Illinois—Continued

Origin line and billing points	Route	Miles: All points on all lines	Miles: Each billing point used but once
C. & I. L. Ry.:			
1. Andromeda	Hammond, I. H. B., Proviso, C. & N. W. Ry	304.4	304.4
2. Cass		297.9	
3. Clay City		277.5	
4. Gilmore		295.1	295.1
5. Howesville		285.6	285.6
6. Little Giant		300.8	300.8
7. Midland		291.8	291.8
8. Owensburg		321.9	321.9
9. Patricksburg		268.9	268.9
10. Rainbow		301.2	301.2
11. Rowlands		287.7	287.7
298 12. Stewards		271.0	271.0
13. Victoria		296.9	
Total		3,800.7	2,928.4
Average		293.4	292.8
C. M. St. P. & P. R. R.:			
1. Blackhawk	Direct	225.2	225.2
2. Coalmont		234.2	234.2
3. Hymera		234.0	234.0
4. Illene		253.6	253.6
5. Keller		221.5	221.5
6. Latta		238.0	238.0
7. Linton		246.3	246.3
8. Sullivan		243.7	
9. Vicksburg		241.9	241.9
Total		2,138.4	1,894.7
Average		237.6	270.7
C. C. C. & St. L. Ry.:			
1. Clay City	Danville, N. Y. C., Momence, C. M. St. P. & P. R. R.	253.7	253.7
2. Daggett		259.9	259.9
3. Hubbell		262.6	262.6
4. Riley		237.7	237.7
5. Saline City		247.6	247.6
Total		1,261.5	1,261.5
Average		252.3	252.3
I. C. R. R.:			
1. Cass	LaSalle, L. S. B. C., LaSalle Jct., C. & N. W. Ry	290.2	290.2
2. Duggen		292.2	292.2
3. Linton		297.9	
4. Sullivan		283.2	
5. Victoria		295.6	295.6
Total		1,459.1	878.0
Average		291.8	292.7
299 Penna. R. R.:			
1. Bicknell	Chicago, C. & N. W. Ry	363.5	363.5
2. Westphalia		355.5	355.5
Total		719.0	719.0
Average		359.5	359.5

RECAPITULATION

Origin line	All billing points on all lines: Number of points	Total miles	Average miles	Each billing point used but once: Number of points	Total miles	Average miles	Tariff authority
C. & E. I. Ry	17	3,983.0	[1] 234.3	17	3,983.0	[1] 234.3	C. & E. I., I. C. C. 263.
C. & I. L. Ry	13	3,800.7	293.4	10	2,928.4	292.8	C. & I. L., I. C. C. 4264.
C. M. St. P. & P. R. R.	9	2,138.4	237.6	8	1,894.7	270.7	C. M. St. P. & P., I. C. C. B-5133.
C. C. C. & St. L. Ry	5	1,261.5	252.3	5	1,261.5	252.3	C. C. C. & St. L., I. C. C. 8513.
I. C. R. R.	5	1,459.1	291.8	3	878.0	292.7	I. C., I. C. C. E-1710.
Penna. R. R.	2	719.0	359.5	2	719.0	359.5	Penna. I. C. C. 929.
	51	13,372.7	262.2	45	11,664.6	259.2	

[1] Short tariff route.

300 *Statement showing distances from Princeton, Indiana, to De Kalb, Illinois*

Origin line and billing points	Route	Miles: All points on all lines	Miles: Each billing point used but once
A. W. & W. Ry.:			
1. Cato	Oakland City Jct.-Sou. Ry.; Princeton, C. & E. I.; Chicago Heights, E., J. & E.; Ingalton, C. G. W. R. R.	347.0	347.0
2. Enosville		341.9	341.9
3. Globe		342.8	342.8
Total		1,031.7	1,031.7
Average		343.9	343.9
B. & O. R. R.: 1. Wheatland	Bando, C. & N. W. Ry	363.9	[1] 363.9
C. & E. I. Ry.:			
1. Fort Branch	Momence, C., M., St. P. & P. R. R.	300.6	300.6
2. King		296.7	296.7
3. Princeton		293.0	293.0
Total		890.3	890.3
Average		296.8	296.8
C., C., C. & St. L. Ry.:			
1. Buckskin	Danville, N. Y. C.; Momence, C., M., St. P. & P. R. R.	342.5	342.5
2. Coal Spur		341.2	341.2
3. Coe		340.6	340.6
4. Elberfeld		347.5	347.5
5. Little		328.9	328.9
6. Maysville		307.4	307.4
7. Oakland City		333.9	----
8. Oakland City Jct		337.6	----
9. Petersburg		322.0	322.0
10. Rogers		316.6	316.6
11. Somerville		338.5	338.5
12. Washington		307.6	307.6
Total		3,964.3	3,292.8
Average		330.4	329.3
301 Sou. Ry.:			
1. Ayershire	Princeton, C. & E. I.; Momence, C., M., St. P. & P. R. R.	312.7	312.7
2. Ayershire mine no. 6		312.9	312.9
3. Ayershire mine no. 7		313.2	313.2
4. Ayershire mine no. 8		314.5	314.5
5. Liberty mine		302.1	302.1
6. Francisco		300.6	300.6
7. Huntingburg		330.3	330.3
8. Jasper		337.0	337.0
9. Oakland City		306.2	306.2
10. Oakland City Jct		307.8	307.8
11. Winslow		314.5	314.5
Total		3,451.8	3,451.8
Average		313.8	313.8

[1] Not on going basis.

RECAPITULATION

Origin line	All billing points on all lines: No. of points	Total miles	Average miles	Each billing point used but once: No. of points	Total miles	Average miles	Tariff authority
A. W. & W. Ry	3	1,031.7	343.9	3	1,031.7	343.9	Sou., I. C. C. C-2150.
B. & O. R. R.							
C. & E. I. Ry	3	890.3	[1] 296.8	3	890.3	296.8	C. & E. I., I. C. C. 263.
C., C., C. & St. L. Ry	12	3,964.3	330.4	10	3,292.8	329.3	C., C., C. & St. L., I. C. C. 8513.
Sou. Ry	11	3,451.8	313.8	11	3,451.8	313.8	Sou. I. C. C. C-2150.
	29	9,338.1	322.0	27	8,666.6	321.0	

[1] Short tariff route.

302 *Statement showing distances from Boonville, Indiana, to De Kalb, Illinois*

Origin line and billing points	Route	Miles	
		All points on all lines	Each billing point used but once
Sou. Ry:			
1. Boonville	Princeton, C. & E. I.; Momence, C., M., St. P. & P. R. R.	360.8	360.8
2. Bryan mine		367.0	367.0
3. Center mine		363.9	363.9
4. Chandler		366.0	366.0
5. Erie Canal mine		366.6	366.6
6. Evanston		355.1	355.1
7. Korff's mine		363.8	363.8
8. Lincoln City		344.2	344.2
9. Oak Knob mine		345.7	345.7
10. Pigeon Creek mine		361.9	361.9
11. Sunlight mine no. 4		357.5	357.5
12. Sunlight mine no. 8		361.1	361.1
Total		4,313.6	4,313.6
Average		359.5	359.5

303 *Exhibit 30*

Statement showing the recapitulation of rates and distances to Rockford, Freeport and De Kalb, Illinois

ROCKFORD, ILLINOIS

From origin group	Present rate	Proposed rate	Short tariff route	Average of short tariff routes, all billing points on all lines	Average, each billing point used but once	Over or under southern Illinois				
						Present rate	Proposed rate	Short tariff route	Average of short tariff routes all billing points on all lines	Average, each billing point used but once
Southern Illinois	200		328	365	349					
Brazil-Clinton	187	170	235	275	273	13-u	30-u	93-u	90-u	76-u
Linton-Sullivan	192	175	271	295	293	8-u	25-u	57-u	70-u	56-u
Princeton	199	[1] 182	334	368	368	1-u	[1] 18-u	6-o	3-o	19-o
Boonville	202	[1] 185	416	416	416	2-o	[1] 15-o	88-o	51-o	67-o

FREEPORT, ILLINOIS

Southern Illinois	200		338	384	368					
Brazil-Clinton	187	170	267	309	307	13-u	30-u	71-u	75-u	61-u
Linton-Sullivan	192	175	299	330	328	8-u	25-u	39-u	54-u	40-u
Princeton	199	[1] 182	356	380	378	1-u	[1] 18-u	18-o	4-u	10-o
Boonville	202	[1] 185	402	402	402	2-o	[1] 15-o	64-o	18-o	34-o

DE KALB, ILLINOIS

Southern Illinois	190		311	336	327					
Brazil-Clinton	174	170	198	241	239	16-u	20-u	113-u	95-u	88-u
Linton-Sullivan	179	175	234	262	259	11-u	25-u	77-u	74-u	68-u
Princeton	186	[1] 182	297	322	321	4-u	[1] 8-u	14-u	14-u	6-u
Boonville	189	[1] 185	360	360	360	1-u	[1] 5-u	49-o	24-o	33-o

[1] Not actually published. Rates indicated are those that would apply were present differentials over Brazil-Clinton and Linton-Sullivan groups maintained.

Explanation of reference marks: u, under; o, over.

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Exhibit 31

Statement showing commercial mines in the southern Illinois district that produced coal in the year of 1931 and the distances from such mines to Rockford, Illinois

Name of operator and mine	Post-office location of mine	Production in tons during 1931	Distances to Rockford via shortest-tariff route	Route	Tariff authority for distances
Bell & Zoller Mining Co. no. 1	Zeigler	936,785	318.1	1	A-B
Bell & Zoller Mining Co. no. 2	"	859,849	315.1	1	A-B
Blue Bird Coal Co	Harrisburg	196,468	399.0	2	C-D-B
Carbon Fuel Co	Marion	89,229	340.6	1	A-B
Brewerton Coal Co. no. 21	West Frankfort	81,758	329.9	1	A-B
Brewerton Coal Co. no. 22	Sesser	62,445	373.3	3	F-B
Carbon Fuel Co	Marion	89,229	340.6	1	A-B
Carterville Coal Mining Co	Carterville	3,150	332.0	1	A-B
Carterville Herrin Coal Co	Herrin	306,302	326.0	1	A-B
Chicago, Wilmington & Franklin Coal Co. no. 1	Orient	516,956	332.3	1	A-B
Chicago, Wilmington & Franklin Coal Co. no. 2	West Frankfort	1,566,660	329.9	1	A-B
Chicago, Wilmington & Franklin Coal Co. A mine	Herrin	91,713	326.0	1	A-B
City Lake Coal Co	Herrin	29,626	326.0	1	A-B
Coal Stripping Co	Marion	18,050	340.6	1	A-B
Consolidated Coal Co. no. 7	Herrin	306,621	326.0	1	A-B
Cosgrove-Meehan Coal Co. no. 1	Marion	178,455	340.6	1	A-B
Cosgrove-Meehan Coal Co. no. 3	Marion	100,864	340.6	1	A-B
Firebrand Fuel Co	Norris City	8,608	378.4	2	C-D-B
Franklin County Coal Co. no. 5	Herrin	498,747	326.0	1	A-B
Franklin County Coal Co. no. 7	Royalton	588,362	324.5	1	A-B
Freeman Coal Co	Herrin	75,801	326.0	1	A-B
Harrisburg Coal Co. no. 9	Harrisburg	23,005	399.0	2	C-D-B
O'Gara Coal Co. no. 1	Harrisburg	542,239	399.0	2	C-D-B
O'Gara Coal Co. no. 3	Harrisburg	343,048	399.0	2	C-D-B
O'Gara Coal Co. no. 10	Eldorado	217,079	352.5	1	A-B
O'Gara Coal Co. no. 12	Harrisburg	38,411	399.0	2	C-D-B
Ogmore Coal Co	Cambria	1,949	329.5	1	A-B
Old Ben Coal Corp. no. 8	West Frankfort	903,625	329.9	1	A-B
Old Ben Coal Corp. no. 11	Christopher	41,552	332.0	1	A-B
305 Old Ben Coal Corp. no. 14	Buckner	847,189	315.6	1	A-B
Old Ben Coal Corp. no. 15	West Frankfort	886,789	329.9	1	A-B
Old Ben Coal Corp. no. 18	Johnston City	165,238	332.3	1	A-B
Peabody Coal Co. no. 18	West Frankfort	392,193	329.9	1	A-B
Peabody Coal Co. no. 19	West Frankfort	648,988	329.9	1	A-B
Peabody Coal Co. no. 25	Carterville	205,174	332.0	1	A-B
Peabody Coal Co. no. 43	Harrisburg	371,424	399.0	2	C-D-B
Peabody Coal Co. no. 47	Harco	579,985	409.4	2	C-D-B
Puritan Coal Co	Marion	5,792	340.6	1	A-B
Rex Coal Co	Eldorado	214,157	352.5	1	A-B
St. Louis Coal & Iron Co	Johnston City	176,533	332.3	1	A-B
Skaggs Coal Co	Harrin	6,154	326.0	1	A-B
Spillerton Coal Co	Marion	1,300	340.6	1	A-B
Wallace Coal Co	Marion	105,812	340.6	1	A-B
Wasson Coal Co. no. 1	Harrisburg	387,053	399.0	2	C-D-B
Wasson Coal Co. no. 2	Harrisburg	44,150	399.0	2	C-D-B
Total and averages		13,753,917	[1] 347.6 [2] 345.3		

[1] All (45), 15,643.0.
[2] Once (16), 5,525.4.

306 EXPLANATION OF REFERENCE MARKS

(1) Average from all points.
(2) Average using each billing point but once.

ROUTE

1. I. C. R. R. Mendota, Ill., and C. M. St. P. & P. R. R.
2. C. C. C. & St. L. Ry., Danville, Ill., N. Y. C. R. R., Momence, Ill., and C. M. St. P. & P. R. R.
3. C. B. & Q. R. R., Mendota, Ill., and C. M. St. P. & P. R. R.

TARIFF AUTHORITIES

A—I. C. R. R., I. C. C. no. A-10441.
B—C. M. St. P. & P. R. R., I. C. C. no. B-6113.
C—C. C. C. & St. L. Ry., I. C. C. no. 8515.
D—N. Y. C. R. R., I. C. C. no. LS-1536.
E—C. & N. W. Ry., I. C. C. no. 9986.
F—C. B. & Q. R. R., I. C. C. no. 17392.

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Exhibit 32

Statement showing commercial mines in the southern Illinois field producing over 5,000 tons, railroads serving such mines, and production during calendar year of 1932

Name of operator	Name or number of mine	Post office of mine	Railroads serving	Output in tons during 1932
Bell & Zoller Coal & Mining Co	1	Zeigler, Ill	C., B. & Q.; I. C.; M. P.	698,870
Do	2	do	C., B. & Q.; I. C.; M. P.	755,977
Brewerton Coal Company	21	West Frankfort, Ill	C. & E. I.; C., B. & Q.; I. C.	73,472
Do	22	Sesser, Ill	C., B. & Q	72,699
Carbon Fuel Company		Marion, Ill	C., B. & Q	69,294
Carterville & Herrin Coal Company.	Jeffries	Herrin, Ill	C., B. & Q.; I. C.; M. P.	6,854
Carterville Peacock Coal Company.		do	M. P	5,700
Chicago, Wilmington & Franklin Coal Co.	1	Orient, Ill	C. & E. I.; C., B. & Q.; I. C.; M. P.	538,577
Do	2	West Frankfort, Ill	C. & E. I.; C., B. & Q.; I. C.; M. P.	1,061,576
City Lake Coal Company		Herrin, Ill	C., B. & Q.; M. P	15,517
Consolidated Coal Company	7	do	C., B. & Q.; I. C.; M. P.	430,495
Cosgrove-Meehan Coal Company.	1	Johnston City, Ill	C., B. & Q	160,464
Do	3	Paulton, Ill	M. P	14,344
Firebrand Fuel Company	1	Norris City, Ill	B. & O.; C., C., C. & St. L.	5,969
Franklin County Coal Company	5	Herrin, Ill	C., B. & Q.; I. C.; M. P.	389,107
Do	7	Royalton, Ill	C., B. & Q.; I. C.; M. P.	443,825
Freeman Coal Mining Company.	Freeman	Herrin, Ill	C., B. & Q	126,748
308 O'Gara Coal Company	1	Harrisburg, Ill	C., C., C. & St. L	356,854
Do	3	do	C., C., C. & St. L	283,331
Do	10	do	C., C., C. & St. L., I. C.	197,095
Old Ben Coal Corporation	8	West Frankfort, Ill	C. & E. I.; C., B. & Q.; I. C.; M. P.	636,821
Do	14	Buckner, Ill	C., B. & Q.; I. C.; M. P.	197,425
Do	15	Ezra, Ill	C. & E. I.; C., B. & Q.; I. C.	611,925
Do	18	Johnston City, Ill	C. & E. I.; C., B. & Q.; I. C.; M. P.	625,216
Peabody Coal Company	18	West Frankfort, Ill	C. & E. I	420,804
Do	19	do	C. & E. I	453,490
Do	25	Carterville, Ill	I. C	200,863
Do	43	Harrisburg, Ill	C., C., C. & St. L	341,258
Do	47	do	C., C., C. & St. L	423,737
Rex Coal Company	2	Eldorado, Ill	I. C	255,766
St. Louis Coal & Iron Company	2	Johnston City, Ill	M. P	38,874
Wallace Coal Company		Marion, Ill	M. P	97,620
Wasson Coal Company	1	Harrisburg, Ill	C., C., C. & St. L	242,639
Do	2	do	C., C., C. & St. L	8,827
Total all mines (34 mines)				10,262,033
Average all mines				301,824

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TOTALS BY RAILROADS

B. & O.:	
Local	
Joint	5,969
Local and joint	5,969
C. & E. I.:	
Local	874,294
Joint	2,673,293
Local and joint	3,547,587
C., B. & Q.:	
Local	389,205
Joint	6,096,452
Local and joint	6,485,657
C., C., C. & St. L.:	
Local	1,656,646
Joint	203,064
Local and joint	1,859,710
I. C. R. R.:	
Local	456,629
Joint	6,210,606
Local and joint	6,667,235
M. P. R. R.:	
Local	156,538
Joint	5,643,722
Local and joint	5,800,260

Authority: Reports of State department of mines and minerals.

Exhibit 33

History of rates and differentials on bituminous coal, carloads, in cents per net ton to Freeport, Illinois, from—

Date of change	Southern Illinois		Brazil-Clinton			Linton-Sullivan			Princeton			Boonville		
	Rate	T. A.	Rate	T. A.	Differential under So. Ill.	Rate	T. A.	Differential under So. Ill.	Rate	T. A.	Differential under So. Ill.	Rate	T. A.	Differential over or under So. Illinois
April 1, 1913	122	1	107	3	15	112	3	10	119	3	3	(1)		
December 1, 1916	122	1	112	3	10	117	3	5	124	3	[2] 2	(1)		
April 16, 1917	127	4	112	3	15	117	3	5	124	3	[2] 2	(1)		
July 1, 1917	127	4	127	3		132	3	[3] 5	139	3	[2] 12	(1)		
October 16, 1917	142	5	127	3	15	132	3	10	139	3	3	(1)		
June 25, 1918	170	6	155	3	15	160	3	10	167	3	3	(1)		
October 5, 1918	172	7	157	3	15	162	3	10	169	3	3	(1)		
May 28, 1919	172	7	157	8	15	162	8	10	169	8	3	182	9	[2] 10
August 26, 1920	230½	10	220	10	9½	227	10	2½	236½	10	[2] 7	255	11	[2] 25½
February 19, 1921	241	12	220	10	21	227	10	14	227	10	14	255	11	[3] 14
July 1, 1922	217	15	198	13	19	204	13	13	213	13	4	230	14	[3] 13
July 19, 1925	217	15	187	15	30	192	15	25	199	15	18	202	16	[3] 15
August 20, 1930	200	17	187	18	13	192	18	8	199	18	1	202	16	[2] 2
Present	200	18	187	18	13	192	18	8	199	18	1	202	21	[2] 2
Proposed	200		170		30	175		25	[4] 182		18	[4] 185		[3] 15

[1] No rates in effect.
[2] Over.
[3] Under.
[4] Not actually published. Rates indicated are those which would apply were present differentials over Brazil-Clinton and Linton-Sullivan groups maintained.

History of rates and differentials on bituminous coal, carloads, in cents per net ton to Rockford, Ill., from—

Date of change	Southern Illinois		Brazil-Clinton			Linton-Sullivan			Princeton			Boonville		
	Rate	T. A.	Rate	T. A.	Differential under So. Ill.	Rate	T. A.	Differential under So. Ill.	Rate	T. A.	Differential under So. Ill.	Rate	T. A.	Differential over or under So. Illinois
April 1, 1913	122	1	102	2	20	107	2	15	114	2	8	(1)		
December 1, 1916	122	1	107	3	15	112	3	10	119	3	3	(1)		
April 16, 1917	127	4	107	3	20	112	3	15	119	3	8	(1)		
July 1, 1917	127	4	122	3	5	127	3		134	3	[2] 7	(1)		
October 16, 1917	142	5	122	3	20	127	3	15	134	3	8	(1)		
June 25, 1918	170	6	150	3	20	155	3	15	162	3	8	(1)		
October 5, 1918	172	7	152	3	20	157	3	15	164	3	8	(1)		
May 28, 1919	172	7	152	8	20	157	8	15	164	8	8	182	9	[2] 10
August 26, 1920	229½	10	213	10	16½	220	[4] 10	9½	229½	10		255	11	[2] 25½
February 19, 1921	241	12	213	10	28	220	10	21	229½	10	11½	255	11	[2] 14
July 1, 1922	217	13	192	13	25	198	13	19	207	13	10	230	14	[2] 13
July 19, 1925	217	15	187	15	30	192	15	25	199	15	18	202	16	[3] 15
August 20, 1930	200	17	187	18	13	192	18	8	199	18	1	202	16	[2] 2
Present	200		187	18	13	192	18	8	199	18	1	202	21	[2] 2
Proposed	200		170		30	175		25	[4] 182		18	[4] 185		[3] 15

[1] No rates in effect.
[2] Over.
[3] Under.
[4] Not actually published. Rates indicated are those which would apply were present differentials over Brazil-Clinton and Linton-Sullivan groups maintained.

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TARIFF AUTHORITY

1. C. B. & Q. R. R., I. C. C. No. 10171.
2. C. & E. I. Ry., I. C. C. No. 2576.
3. C. & E. I. Ry., I. C. C. No. 2824.
4. C. B. & Q. R. R., I. P. U. C. No. 13, Supplement No. 46.
5. I. C. R. R., I. C. C. No. E-1422.
6. I. C. R. R., I. C. C. No. E-1422, Supplement No. 2.
7. I. C. R. R., I. C. C. No. E-1434.
8. C. & E. I. Ry., I. C. C. No. 2824, Supplement No. 40.
9. Sou. Ry., I. C. C. No. C-1885.
10. C. & E. I. Ry., I. C. C. No. 3070, Supplement No. 11.
11. Sou. Ry., I. C. C. No. C-1885, Supplement No. 9.
12. C. & E. I. Ry., I. C. C. No. 3070, Supplement No. 15.
13. C. & E. I. Ry., I. C. C. No. 8, Supplement No. 2.
14. Sou. Ry., I. C. C. No. C-1885, Supplement No. 24.
15. C. & E. I. Ry., I. C. C. No. 163.
16. Sou. Ry., I. C. C. No. C-2060, Supplement No. 4.
17. C. & E. I. Ry., Ill. C. C. No. 209, Supplement No. 22-A.
18. C. & E. I. Ry., I. C. C. No. 263.
19. Sou. Ry., I. C. C. No. C-2060, Supplement No. 40.
20. Sou. Ry., I. C. C. No. C-2060, Supplement No. 49.
21. Sou. Ry., I. C. C. No. C-2150.

95952—34——14

313 *Exhibit 34*

Recapitulation of detailed statement showing the average distance from all mines in the Springfield Group to Rockford, Illinois, via shortest tariff routes. (See note 1)

[Rates are stated in cents per ton of 2,000 pounds]

Roads	Number of origins	Total miles	Average mileage	Route	Present rate	Percent of H. & H. scale
Alton	20	4,865.7	243.3	A	170	66.6
B. & O.	6	1,487.4	247.9	B	170	66.6
C. & E. I.	5	1,485.5	297.1	C	170	59.4
C. & I. M.	7	1,573.9	224.8	D	170	70.6
C. & N. W.	14	3,263.6	233.1	E	170	68.5
C. B. & Q.	6	1,673.4	278.9	F	170	62.2
C. S. & St. L.	2	394.4	197.2	G	170	77.6
C. C. C. & St. L.	6	1,731.3	288.6	H	170	60.9
I. C.	9	1,789.9	198.6	I	170	77.6
I. T.	8	2,229.9	278.7	J	170	62.2
L. & M.	3	821.9	273.9	K	170	62.2
N. Y. C. & St. L.	4	1,123.7	280.9	L	170	60.9
P. R. R.	1	250.8	250.8	M	170	65.1
S. T.	1	201.2	201.2	N	170	75.1
Wabash	8	2,148.8	268.6	O	170	63.7
Average	100	25,041.4	250.4	.....	170	66.1

See page 208 for explanation of tariff authorities, routes, and references.

314 *Detailed statement showing the average distance from all mines in the Springfield District to Rockford, Illinois, via shortest tariff routes.*

From—	Distance	Route
Alton Railroad:		
Auburn	250.3	Alton Peoria, C. & N. W.
Carlinville	273.5	Do.
Chatham	244.2	Do.
Girard	260.5	Do.
Green Ridge	262.4	Do.
Greenview	216.1	Do.
Lefton	248.9	Do.
Lincoln	221.9	Alton Custer, R. T. & N.; Granville, C. M. St. P. & P.
Middletown	213.3	Alton Peoria, C. & N. W.
Nilwood	264.2	Do.
Panther Creek	248.0	Do.
Petersburg	223.9	Do.
Schoper	273.0	Do.
Selbytown	229.6	Do.
Sherman	227.3	Do.
Springfield	234.8	Do.
Tallula	231.1	Do.
Thayer	254.1	Do.
Virden	256.7	Do.
Williamsville	231.9	Do.
Total miles	4,865.7	
Average	243.3	
B. & O. R. R.:		
Edinburg	248.5	B. & O., Bando, C. & N. W.
Keys	238.2	Do.
Pana	273.6	Do.
Pleasant Plains	238.7	Do.
Springfield	230.9	Do.
Taylorville	257.5	Do.
Total miles	1,487.4	
Average	247.9	
315 C. & E. I. R. R.:		
Hillsboro	303.2	C. & E. I. Momence, C., M. St. P. & P.
Livingston	323.7	Do.
Nokomis	289.0	Do.
Pana	275.9	Do.
Witt	293.7	Do.
Total miles	1,485.5	
Average	297.1	

Detailed statement showing the average distance from all mines in the Springfield District to Rockford, Illinois, via shortest tariff routes—Continued

From—	Distance	Route
C. & I. M. Ry.:		
Auburn	216.0	C. & I. M. Cimic, I. C., Mendota, C. M. St. P. & P.
Callaway	227.4	Do.
Humphrey	222.1	Do.
Kincaid	224.1	Do.
Taylorville	232.0	Do.
Springfield	229.9	C. & I. M. Barr, C. & N. W.
Andrews	222.4	Do.
Total miles	1,573.9	
Average	224.8	
C. & N. W. Ry.:		
Allen	193.2	C. & N. W. direct.
Archer	230.2	Do.
Barr	217.3	Do.
Compro	844.1	Do.
Cons. Coal Co. # 4	284.5	Do.
Girard	254.3	Do.
Green Valley	186.1	Do.
Hubley	205.2	Do.
Lick	237.6	Do.
Luther	200.8	Do.
Siding # 3	272.3	Do.
Sweetwater	214.0	Do.
Virden	250.2	Do.
Henderson (W. Va. C. Co.)	273.8	
Total miles	3,263.6	
Average	233.1	
316 C., B. & Q. R. R.:		
Girard	264.9	C., B. & Q., Mendota, C., M., St. P. & P
Litchfield	284.5	Do.
Panama	302.2	Do.
Sorento	298.2	Do.
Thayer	262.6	Do.
Virden	261.0	Do.
Total miles	1,673.4	
Average	278.9	
C., S. & St. L. Ry.:		
Citizens mine A	197.2	C., S. & St. L., Springfield, I. C., Mendota, C., M., St. P. & P.
Citizens mine B	197.2	Do.
Total miles	394.4	
Average	197.2	
C., C., C. & St. L. Ry.:		
Bethalto	295.1	C., C., C. & St. L., Gillespie, C. & N. W.
Hillsboro	270.0	C., C., C. & St. L., Pana., I. C.
Livingston	291.0	Do.
Moro	294.1	C., C., C. & St. L., Gillespie, C. & N. W.
Nokomis	256.0	C., C., C. & St. L., Pana., I. C.
Pana	325.1	C., C., C. & St. L., Gillespie, C. & N. W.
Total miles	1,731.3	
Average	288.6	
I. C. R. R.:		
Assumption	196.8	I. C., Mendota, C., M., St. P. & P.
Bissell	192.2	Do.
Decatur	173.7	Do.
Divernon	212.7	Do.
Lincoln	174.3	Do.
Mt. Olive	247.8	Do.
Mowequa	189.4	Do.
Pana	205.9	Do.
Springfield	197.1	Do.
Total miles	1,789.9	
Average	198.8	

Detailed statement showing the average distance from all mines in the Springfield District to Rockford, Illinois, via shortest tariff routes—Continued

From—	Distance	Route
317 I. T. R. R.:		
Auburn	260.7	I. T., Peoria, C. & N. W. Ry.
Carlinville	284.5	Do.
Dawson	250.4	Do.
Edwardsville	316.8	I. T., Mont, I. C.
Gillespie	296.7	I. T., Peoria, C. & N. W. Ry.
Springfield	244.5	Do.
Thayer	265.2	Do.
Worden	311.1	Do.
Total miles	2,229.9	
Average	278.7	
L. & M. Ry.:		
Edwardsville	270.0	L. & M., Mt. Olive, I. C., Mendota, C., M., St. P. & P.
Staunton	264.8	Do.
Mt. Olive	287.1	L. & M., Mont, I. C.
Total miles	821.9	
Average	273.9	
N. Y. C. & St. L. Ry.:		
Sorento	251.7	N. Y. C. & St. L., Ramsey, I. C., Mendota, C., M., St. P. & P.
Panama	248.5	Do.
Coffeen	277.0	Do.
Edwardsville	364.5	N. Y. C. & St. L., E. St. Louis, Alton, Peoria, C. & N. W.
Total miles	1,123.7	
Average	280.9	
P. R. R.: Decatur	250.8	Pennsylvania, Peoria, C. & N. W.
S. T. Ry.: Colliery	201.2	S. T., Springfield, I. C., Mendota, C., M., St. P. & P.
318 Wabash Ry.:		
Decatur	228.2	Wabash, Manhattan, C., M., St. P. & P.
Litchfield	289.1	Do.
Mt. Olive	297.2	Do.
Riverton	260.1	Do.
Springfield	266.8	Do.
Staunton	302.9	Do.
Stonington	247.9	Do.
Taylorville	256.6	Do.
Total miles	2,148.8	
Average	268.6	

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EXPLANATION OF ROUTES

A [1]—Alton, Peoria, C. & N. W.
B—B. & O. Bando., C. & N. W.
C—C. & E. I., Momence, C., M., St. P. & P.
D—C. & I. M., Cmlic., I. C., Mendota, C., M., St. P. & P.
E—C. & N. W., direct.
F—C. B. & Q., Mendota, C., M., St. P. & P.
G—C. S. & St. L., Springfield, I. C., Mendota, C., M., St. P. & P.
H [2]—C., C., C. & St. L., Gillespie, C. & N. W.
I—I. C., Mendota, C. M. St. P. & P.
J [3]—I. T., Peoria, C. & N. W.
K [4]—L. & M., Mt. Olive, I. C., Mendota, C., M., St. P. & P.
L—N. Y. C. & St. L., Ramsey, I. C., Mendota, C. M. St. P. & P.
M—P. R. R., Peoria, C. & N. W.
N—S. T., Springfield, I. C., Mendota, C., M., St. P. & P.
O—Wabash, Manhattan, C. M. St. P. & P.

TARIFF AUTHORITIES: (ILL. C. C. NUMBERS)

Road	Mileages	Rates	Road	Mileages	Rates
Alton	857	769	I. T	52	30
C. & I. M	B-151	B-152	C. C. C. & St. L	900	898
C. & N. W	590	636	N. Y. C. & St. L	137	.....
I. C	A-151	E-122	Wabash	806	836
C. M. St. P. & P	367	.....			

EXPLANATION OF NOTE 1

NOTE 1.—Each mine is used as many times as it is shown as an origin point on the different roads in the Springfield group.

[1] From Lincoln via Alton, Custer, R. T. & N., Granville, C., M., St. P. & P.
[2] From Hillsboro, Livingston, and Nokomis via C., C., C. & St. L. Pena., I. C.
[3] From Edwardsville via I. T. Mont., I. C.
[4] From Mt. Olive via L. & M., Benld., C. & N. W.

320 *Exhibit 35*

Recapitulation of detailed statement showing the average distance from all mines in the Springfield Group to Freeport, Illinois, via shortest tariff routes. (See Note 1)

[Rates are stated in cents per ton of 2,000 pounds]

Roads	Number of origins	Total miles	Average mileage	Route	Present rate	Percent of H. & H. scale
Alton	20	5,438.3	271.9	A	170	62.2
B. & O	6	1,655.4	275.9	B	170	62.2
C. & E. I	5	1,688.0	337.6	C	170	54.8
C. & E. M	7	1,676.9	239.6	D	170	68.5
C. & N. W	14	3,655.6	261.1	E	170	63.7
C. B. & Q	6	1,917.0	319.5	F	170	57.0
C. S. & St. L	2	413.0	206.5	G	170	75.1
C. C. C. & St. L	6	1,587.3	264.5	H	170	63.7
I. C	9	1,876.1	208.5	I	170	75.1
I. T	8	2,398.2	299.8	J	170	59.4
L. & M	3	868.3	289.4	K	170	60.9
N. Y. C. & St. L	4	1,179.3	294.8	L	170	59.4
P. R. R	1	278.8	278.8	M	170	62.2
S. T	1	210.5	210.5	N	170	72.9
Wabash	8	2,473.6	309.2	O	170	58.2
Average	100	27,316.3	273.2	----	170	62.6

For reference of notes, reference marks, and tariff authorities, also routes, see page 211

321 *Detailed statement showing the average distance from all mines in the Springfield Group to Freeport, Illinois, via shortest tariff routes*

From—	Distance	Route
Alton R. R.:		
Auburn	278.3	Alton, Peoria, C. & N. W.
Carlinville	301.5	Do.
Chatham	272.2	Do.
Girard	288.5	Do.
Green Ridge	290.4	Do.
Greenview	244.1	Do.
Lefton	276.9	Do.
Lincoln	262.5	Alton, Custer, R. T. & N.; Granville, C. M. St. P. & P.
Middletown	241.3	Alton, Peoria, C. & N. W.
Nilwood	292.2	Do.
Panther Creek	276.0	Do.
Petersburg	251.9	Do.
Schoper	301.0	Do.
Selbytown	257.6	Do.
Sherman	255.3	Do.
Springfield	262.8	Do.
Tallula	259.1	Do.
Thayer	282.1	Do.
Virden	284.7	Do.
Williamsville	259.9	Do.
Total miles	5,438.3	
Average	271.9	
B. & O. R. R.:		
Pana	301.6	B. & O., Bando, Ill., C. & N. W. Ry.
Taylorville	285.5	Do.
Edinburg	276.5	Do.
Keys	266.2	Do.
Springfield	258.9	Do.
Pleasant Plains	266.7	Do.
Total miles	1,655.4	
Average	275.9	
322 C. & E. I. Ry.:		
Hillsboro	343.7	C. & E. I. Momence, C. M. St. P. & P.
Livingston	364.2	Do.
Nokomis	329.5	Do.
Pana	316.4	Do.
Witt	334.2	Do.
Total miles	1,688.0	
Average miles	337.6	

Detailed statement showing the average distance from all mines in the Springfield group to Freeport, Illinois, via shortest tariff routes—Continued

From—	Distance	Route
C. & I. M. Ry.:		
Auburn	225.4	C. & I. M., Clinic, Illinois, I. C. R. R.
Callaway	236.8	Do.
Humphrey	231.5	Do.
Kincaid	233.5	Do.
Taylorville	241.4	Do.
Springfield	257.9	C. & I. M., Barr, Illinois, C. & N. W. Ry.
Andrews	250.4	Do.
Total miles	1,676.9	
Average	239.6	
C. & N. W. Ry:		
Allen	221.2	C. & N. W. direct.
Archer	258.2	Do.
Barr	245.3	Do.
Compro	272.1	Do.
Cons. Coal Co. # 4	312.5	Do.
Girard	282.3	Do.
Green Valley	214.1	Do.
Hubley	233.2	Do.
Lick	265.6	Do.
Luther	228.8	Do.
Siding # 3	300.3	Do.
Sweetwater	242.0	Do.
Virden	278.2	Do.
Henderson (W. Va. C. Co.)	301.8	Do.
Total miles	3,685.6	
Average	261.1	
323 C. B. & Q. Ry.:		
Girard	305.5	C., B. & Q., Mendota, C. M. St. P. & P.
Litchfield	325.1	Do.
Panama	342.8	Do.
Sorento	338.8	Do.
Thayer	303.2	Do.
Virden	301.6	Do.
Total miles	1,917.0	
Average	319.5	
C. S. & St. L. Ry.:		
Citizens Mine A	206.5	C. S. & St. L., Springfield I. C.
Citizens Mine B	206.5	Do.
Total miles	413.0	
Average	206.5	
C. C. C. & St. L. Ry.:		
Bethalto	274.8	C. C. C. & St. L., Gillespie, C. & N. W.
Hillsboro	242.3	C. C. C. & St. L., Pana, I. C.
Livingston	263.3	Do.
Moro	273.8	C. C. C. & St. L., Gillespie, C. & N. W.
Nokomis	228.3	C. C. C. & St. L., Pana, I. C.
Pana	304.8	C. C. C. & St. L., Gillespie, C. & N. W.
Total miles	1,587.3	
Average	264.5	
I. C. R. R.:		
Assumption	206.1	I. C. direct.
Bissell	201.5	Do.
Decatur	183.0	Do.
Divernon	224.8	Do.
Lincoln	183.6	Do.
Mt. Olive	257.1	Do.
Mowequa	198.7	Do.
Pana	215.3	Do.
Springfield	206.5	Do.
Total miles	1,876.1	
Average	208.5	

Detailed statement showing the average distance from all mines in the Springfield Group to Freeport, Illinois, via shortest tariff routes—Continued

From—	Distance	Route
324 I. T. R. R.:		
Auburn	288.7	I. T., Peoria, C. & N. W.
Carlinville	312.5	Do.
Dawson	278.4	Do.
Edwardsville	289.1	I. T., Mont., I. C.
Gillespie	324.7	I. T., Peoria, C. & N. W.
Springfield	272.5	Do.
Thayer	293.2	Do.
Worden	339.1	Do.
Total miles	2,398.2	
Average	299.8	
L. & M. Ry.:		
Edwardsville	270.2	L. & M., Mt. Olive, I. C.
Staunton	274.0	Do.
Mt. Olive	315.1	L. & M., Benld, C. & N. W.
Total miles	868.3	
Average	289.4	
N. Y. C. & St. L. Ry.:		
Sorento	260.7	N. Y. C. & St. L., Ramsey, I. C.
Panama	257.7	Do.
Coffeem	286.2	Do.
Edwardsville	374.5	N. Y. C. & St. L., E. St. Louis, Alton, Peoria, C. & N. W.
Total miles	1,179.3	
Average	294.8	
P. R. R.: Decatur	278.8	Pennsylvania, Peoria, C. & N. W.
S. T. Ry.: Colliery	210.5	S. T. Ry., Springfield, I. C.
325 Wabash Ry.:		
Decatur	268.8	Wabash, Manhattan, C. M. St. P. & P.
Litchfield	329.7	Do.
Mt. Olive	337.8	Do.
Riverton	300.7	Do.
Springfield	307.4	Do.
Staunton	343.5	Do.
Stonington	288.5	Do.
Taylorville	297.2	Do.
Total miles	2,473.6	
Average	309.2	

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EXPLANATION OF ROUTES

A—Alton, Peoria, C. & N. W.[1]
B—B. & O., Bando, C. & N. W.
C—C. & E. I., Momence, C. M. St. P. & P.
D—C. & I. M., Cimic, I. C.
E—C. & N. W., direct.
F—C. B. & Q., Mendota, C. M. St. P. & P.
G—C., S. & St. L., Springfield, I. C.
H—C. C. C. & St. L., Gillespie, C. & N. W.[2]
I—I. C.
J—I. T., Peoria, C. & N. W.[3]
K—L. & M., Mt. Olive, I. C.[4]
L—N. Y. C. & St. L., Ramsey, I. C.
M—P. R. R., Peoria, C. & N. W.
N—S. T., Springfield, I. C.
O—Wabash, Manhattan, C. M. St. P. & P.

TARIFF AUTHORITIES (ILL. C. C. NUMBERS)

Road	Mileages	Rates	Road	Mileages	Rates
Alton	857	769	I. T.	52	30
C. & I. M.	B-151	B-152	C. C. C. & St. L.	900	898
C. & N. W.	590	636	N. Y. C. & St. L.	137	------
I. C.	A-1, 151	E-122	Wabash	806	836
C. M. St. P. & P.	367	------			

EXPLANATION OF NOTE 1

NOTE 1.—Each mine is used as many times as it is shown as an origin point on the different roads in the Springfield group.

[1] From Lincoln via Alton, Custer R. T. & N., Granville, C. M. St. P. & P.
[2] From Hillsboro, Livingston, and Nokomis, C. C. C. & St. L., Pana, I. C.
[3] From Edwardsville via I. T. Mont., I. C.
[4] From Mt. Olive via L. & M., Benld., C. & N. W.

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Exhibit 36

Statement showing distances via shortest tariff route, from mines in the Springfield group, to Rockford, Illinois, using each point of origin but once

From—	Miles	Rate	Percent of H. & H. scale	Ton-mile earnings	Route
Andrews	222.4	170	70.5	7.6	A
Auburn	216.0	170	72.9	7.8	B
Callaway	227.4	170	70.5	7.4	B
Carlinville	273.5	170	62.3	6.2	C
Decatur	177.7	170	83.3	9.9	D
Edwardsville	270.0	170	63.6	6.3	E
Gillespie	322.9	170	55.9	5.3	F
Hillsboro	270.0	170	63.6	6.3	G
Humphrey	222.1	170	70.5	7.5	B
Kincaid	224.1	170	70.5	7.6	B
Lincoln	174.3	170	83.3	9.7	D
Livingston	291.0	170	59.4	5.8	G
Mt. Olive	247.8	170	66.5	6.8	D
Mowequa	189.4	170	80.6	8.9	D
Nokomis	256.0	170	65.1	6.7	G
Pana	205.9	170	75.2	8.3	D
Panama	248.5	170	66.5	6.9	H
Panther Creek	248.0	170	66.5	6.8	C
Riverton	260.1	170	65.1	6.5	I
Schoper	273.0	170	62.3	6.2	C
Sherman	227.3	170	70.5	7.5	C
Springfield	197.1	170	77.5	8.6	D
Staunton	264.8	170	63.6	6.4	E
Taylorville	232.0	170	68.5	7.2	B
Thayer	254.1	170	65.1	6.7	C
Virden	256.1	170	65.1	6.6	C
Average	240.3	170	68.5	7.0	

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EXPLANATION OF ROUTES

A—C. & I. M. Barr C. & N. W.
B—C. & I. M. Cimic I. C. Mendota C. M. St. P. & P.
C—Alton Peoria C. & M. W.
D—I. C. Mendota C. M. St. P. & P.
E—L. & M. Mt. Olive I. C. Mendota C. M. St. P. & P.
F—I. T. Peoria C. & N. W.
G—C. C. C. & St. L. Pana I. C.
H—N. Y. C. & St. L. Ramsey I. C. Mendota C. M. St. P. & P.
I—Wabash Manhattan C. M. St. P. & P.

TARIFF AUTHORITIES: (ILL. C. C. NUMBERS)

Road	Mileages	Rates	Road	Mileages	Rates
Alton	857	769	I. T	52	30
C. & I. M	B-151	B-152	C. C. C. & St. L	900	898
I. C	A-1151	E-122	N. Y. C. & St. L	137	.....
C. M. St. P. & P	367	.....	Wabash	806	836

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Exhibit 37

Statement showing distances via shortest tariff route, from mines in the Springfield group to Freeport, Illinois, using each point of origin but once

From—	Miles	Rate	Percent of H. & H. scale	Ton-mile earnings	Route
Andrews	250.4	170	66.5	6.8	A
Auburn	225.4	170	70.5	7.5	B
Callaway	236.8	170	68.5	7.2	B
Carlinville	301.5	170	59.4	5.6	C
Decatur	183.0	170	80.6	9.3	D
Edwardsville	279.2	170	62.3	6.1	E
Gillespie	324.7	170	55.9	5.3	F
Hillsboro	242.3	170	66.5	7.0	G
Humphrey	231.5	170	68.5	7.3	B
Kincaid	233.5	170	68.5	7.2	B
Lincoln	183.6	170	80.6	9.2	D
Livingston	263.3	170	63.6	6.4	G
Mt. Olive	257.1	170	65.1	6.6	D
Mowequa	198.7	170	77.5	8.5	D
Nokomis	228.3	170	70.5	7.4	G
Pana	215.3	170	72.9	7.9	D
Panama	257.7	170	65.1	6.6	H
Panther Creek	276.0	170	62.3	6.1	C
Riverton	300.7	170	59.4	5.6	I
Schoper	301.0	170	59.4	5.6	C
Sherman	255.3	170	65.1	6.6	C
Springfield	206.5	170	75.2	8.2	D
Staunton	274.0	170	62.3	6.2	E
Taylorville	241.4	170	66.5	7.1	B
Thayer	282.1	170	60.9	6.0	C
Virden	284.7	170	60.9	6.0	C
Average	251.3	170	65.1	6.7	

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EXPLANATION OF ROUTES

A—C. & I. M. Barr C. & N. W.
B—C. I. & M. Cimic I. C.
C—Alton Peoria C. & N. W.
D—I. C. Direct.
E—L. & M. Mt. Olive I. C.
F—I. T. Peoria C. & N. W.
G—C., C., C. & St. L. Pana. I. C.
H—N. Y. C. & St. L. Ramsey I. C.
I—Wabash Manhattan C. M. St. P. & P.

TARIFF AUTHORITIES: (ILL. C. C. NUMBERS)

Road	Mileage	Rates	Road	Mileage	Rates
C. & I. M	B-151	B-152	C. T	52	30
C. & N. W	590	636	C., C., C. & St. L	900	898
I. C	A-1151	E-122	N. Y. C. & St. L	137	------
Alton	857	769	Wabash	806	836
L. & M	207	------	C. M. St. P. & P	367	------

331 *Exhibit 38*

Statement showing distances via all tariff routes, present and proposed rates, and per cent of Holmes & Hallowell scale, from all mines in the Clinton-Brazil and Linton-Sullivan groups, as compared with Springfield group

[Rates are stated in cents per ton of 2,000 pounds]

From—	Distances via all short-tariff routes				
	Distance	Rate		% of H. & H. scale	
		Present	Prop.	Present	Proposed
To Rockford:					
Brazil-Clinton	274.9	187	170	68.6	62.5
Linton-Sullivan	294.5	192	175	67.1	61.2
Springfield group	250.4	170	----------	66.1	----------
To Freeport:					
Brazil-Clinton	309.3	187	170	64.0	58.2
Linton-Sullivan	329.6	192	175	63.1	57.5
Springfield group	273.2	170	----------	62.6	----------

332 *Exhibit 39. Malum*

Statement showing distances via short tariff routes, using each point of origin but once; present and proposed rate and percent of Holmes & Hallowell scale, from Brazil-Clinton and Linton-Sullivan groups, as compared with Springfield group

[Rates are stated in cents per ton of 2,000 pounds]

From—	Using each point of origin but once				
	Distance	Rate		% of H. & H. scale	
		Present	Proposed	Present	Proposed
To Rockford:					
Brazil-Clinton	272.7	187	170	68.6	62.5
Linton-Sullivan	292.5	192	175	67.1	61.2
Springfield group	240.3	170	----------	68.5	----------
Springfield proper	197.1	170	----------	77.5	----------
To Freeport:					
Brazil-Clinton	307.3	187	170	64.0	58.2
Linton-Sullivan	328.0	192	175	63.1	57.5
Springfield group	251.3	170	----------	65.1	----------
Springfield proper	206.5	170	----------	75.2	----------

Bituminous coal, carloads

[Rates in cents per ton of 2,000 pounds]

To	Freeport, Illinois						Rockford, Illinois						Chicago
From	Average distances via short tariff routes (miles)	Present rates	Present rates reduced 17¢ ton	H. & H. scale, 69 I. C. C. 18	% present rates of H. & H. scale	% rates reduced 17¢ ton of H. & H. scale	Average distances via short tariff routes (miles)	Present rates	Present rates reduced 17¢ ton	H. & H. scale, 69 I. C. C. 18	% present rates of H. & H. scale	% rates reduced 17¢ ton of H. & H. scale	Present rates
ILLINOIS GROUPS													
Northern Illinois	130.8	100	83	175	57.1	----------	103.8	100	83	153	65.4	----------	120
Springfield	261.3	170	153	267	63.7	----------	234.1	170	153	248	68.5	----------	165
Centralia	332.2	190	173	310	61.3	----------	308.8	190	173	292	65.1	----------	165
Belleville	343.9	190	173	316	60.1	----------	341.1	190	173	316	60.1	----------	185
DuQuoin	313.6	195	178	298	65.4	----------	304.4	195	178	292	66.8	----------	185
Southern Illinois	384.3	200	183	340	58.8	----------	376.5	200	183	334	59.9	----------	195
INDIANA GROUPS													
Brazil-Clinton	304.3	187	[1] 170	292	64	58.2	270.9	187	[1] 170	273	68.5	62.3	155
Linton-Sullivan	337.0	192	[1] 175	310	61.9	56.5	302.3	192	[1] 175	292	65.8	59.9	165
Princeton	386.1	199	182	340	58.5	----------	369.0	199	182	328	60.7	----------	177
Booneville	396.9	202	185	346	58.4	----------	412.0	202	185	358	56.4	----------	180
West Kentucky	444.5	235	218	371	63.3	----------	451.5	235	218	383	61.4	----------	230

[1] Under suspension in I. & S. Dkt. 3843. Authority for distances, exhibit 285, I. C. C. Dkt. 23130. Tariff authorities: I. C. R. R. No. 3100-G, I. C. C. E-1710; C. & E. I. Ry. No. 100-B, I. C. C. 263; Sou. Ry. No. 809-F, I. C. C. C-2150. Rates shown herein are basic rates and do not include emergency charges per Ex parte 103. Illinois Central R. R., Commerce Bureau, Chicago, Illinois. February 8, 1933. K-1, I. & S. 3843.

334 *Exhibit 41. I. & S. Docket No. 3843*

Bituminous coal, carloads

[Rates in cents per ton of 2,000 pounds]

From	To	Short line average distance (miles)	Present rates	H. & H. scale 69 I. C. C. 18	% present rates of H. & H. scale	Rates under suspension	% suspended rate of H. & H. scale
C., M., St. P. & P. mines in Brazil-Clinton group.	Freeport, Ill...	260	187	261	71.6	170	65.2
I. C. R. R. mines in Springfield group.	Freeport, Ill...	208	170	226	75.2	.....	.....
C., M., St. P. & P. mines in Brazil-Clinton group.	Rockford, Ill..	231	187	248	75.4	170	68.5
I. C. R. R. mines in Springfield group.	Rockford, Ill..	199	170	219	77.6	.....	.....

Present rates and distances taken from exhibits 1 and 2 attached to C., M., St. P. & P. Ry. answer to request for suspension dated Dec. 16, 1932.
Illinois Central R. R., Commerce Bureau, Chicago, Illinois. February 15, 1933. K-1 I. & S. 3843.

335 *Exhibit 42. I. & S. Docket No. 3843*

Bituminous coal, carloads

[Rates in cents per ton of 2,000 pounds]

From	To	Average distances via short tariff routes (miles)	Rate under suspension	H. & H. scale, 69 I. C. C. 18	% suspended rates of H. & H. scale	I. C. C. 23922 scale	% I. C. C. 23922 scale of H. & H. scale	Present rates	% present rates of H. & H. scale	% rates of I. C. C. 23922 scale
Brazil-Clinton group....	Freeport, Ill.....	304.3	170	292	58.2	223	76.4	187	64	83.9
	Rockford, Ill.....	270.9	170	273	62.3	207	75.8	187	68.5	90.3
Linton-Sullivan group...	Freeport, Ill.....	337.0	175	310	56.5	231	74.5	192	61.9	83.1
	Rockford, Ill.....	302.3	175	292	59.9	223	76.4	192	65.8	86.1

Distances taken from exhibit 285, I. C. C. Docket 23130.
Rates from C., M., St. P. & P. tariff GFD No. 15200-B, I. C. C. No. B-5133.
I. C. C. 23922 scale from mimeographed report decided January 24, 1933, progressed 8 cents for each 25-mile block over 300 miles.
Rates shown herein are basic rates and do not include emergency charges per Ex parte 103.
Illinois Central R. R., Commerce Bureau, Chicago, Illinois. February 8, 1933. K-1 I. & S. 3843.

336 *Exhibit 43. I. & S. Docket No. 3843*

Statement showing number of tons of bituminous coal from mines in Illinois, Indiana, and West Kentucky received at Rockford, Illinois

From	1929, number of tons	1930, number of tons	1931, number of tons	1932, number of tons
GROUPS				
Northern Illinois	20,415	6,703	1,442	11,791
Danville		159		
Fulton-Peoria	687	3,189	3,900	2,332
Springfield	9,087	15,146	17,065	22,335
Centralia	901	138	445	57
Belleville	1,989	732	2,535	865
DuQuoin	2,818	1,481	6,254	9,540
Southern Illinois	259,270	182,233	140,906	110,761
Total Illinois groups	295,167	209,781	172,547	157,681
Brazil-Clinton	19,290	62,955	40,183	27,276
Linton-Sullivan	68,824	25,488	8,195	16,994
Princeton	4,186	13,401	6,733	43,794
Booneville	10,177	31,941	35,827	1,888
Total Indiana groups	102,477	133,785	90,938	89,952
Western Kentucky	56,804	28,419	13,472	21,222
Grand total all groups	454,448	371,985	276,957	268,855

Illinois Central R. R., Commerce Bureau, Chicago, Illinois. February 8, 1933. K-1 I. & S. 3843.

Exhibit 44. Waffle

Statement of shipments during calendar year 1931 from each southern Illinois mine via origin roads serving the mine

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Mine operator	Mine no.	Origin road	Tons shipped						Percent of total					
			C. & E. I.	C., B. & Q.	C., C., C. & St. L.	I. C.	Mo. Pac.	Total	C. & E. I.	C., B. & Q.	C., C., C. & St. L.	I. C.	Mo. Pac.	Total
Bell & Zoller Mining Company	1	2-4-5		350,700		264,486	133,853	749,039		47		35	18	100
Bell & Zoller Mining Company	2	2-4-5		311,616		237,435	127,787	676,838		46		35	19	100
Blue Bird Coal Company		3			167,903			167,903			100			100
Carbon Fuel Company		2		72,479				72,479		100				100
Brewerton Coal Company	21	1-2-4	7,007	42,457		20,923		70,387	10	60		30		100
Brewerton Coal Company	22	2		53,675				53,675		100				100
Carterville Coal Mining Company		5					2,900	2,900					100	100
Carterville-Herrin Coal Company		2-4-5		243,000				243,000		100				100
Chicago-Wilmington & Franklin Coal Co	1	1-2-4-5	25,753	214,323		89,504	88,306	417,886	7	51		21	21	100
Chicago-Wilmington & Franklin Coal Co	2	1-2-4-5	57,930	505,108		232,966	383,313	1,179,317	5	43		20	32	100
Chicago-Wilmington & Franklin Coal Co	A	2-4-5		25,530		17,897	20,310	63,737		40		28	32	100
City Lake Coal Company		2-5		5,657			2,129	7,786		73			27	100
Consolidated Coal Company	7	2-4-5		78,165		79,146	87,989	245,300		32		32	36	100
Cosgrove-Meehan Coal Company	1	2		134,710				134,710		100				100
Cosgrove-Meehan Coal Company	3	5					83,143	83,143					100	100
Firebrand Fuel Company		3-6			3,463			3,463			100			100
Franklin County Coal Company	5	2-4-5		220,105		126,638	115,232	461,975		48		27	25	100
Franklin County Coal Company	7	2-4-5		221,214		83,079	97,424	401,717		55		21	24	100
Freeman Coal Company		2-4		16,495		50,352		66,847		25		75		100
Harrisburg Coal Mining Company	9	3			16,447			16,447			100			100
O'Gara Coal Company	1	3			485,419			485,419			100			100
O'Gara Coal Company	3	3			199,408			199,408			100			100
O'Gara Coal Company	10	3-4			61,238	87,193		148,431			41	59		100
O'Gara Coal Company	12	3			24,213			24,213			100			100
Ogmore Coal Company		4				696		696				100		100
Old Ben Coal Corporation	8	1-2-4-5	50,947	401,359		65,308	257,982	775,596	7	52		8	33	100
Old Ben Coal Corporation	11	2		41,330				41,330		100				100
Old Ben Coal Corporation	14	2-4-5		413,753		133,943	151,562	699,258		59		19	22	100
Old Ben Coal Corporation	15	1-2-4	54,834	445,222		209,514		709,570	8	63		29		100
Old Ben Coal Corporation	18	1-2-4-5	3,107	53,967		21,492	45,378	123,944	2	44		17	37	100
Peabody Coal Company	18	1-2-4	60,091	195,346		52,208		307,645	20	63		17		100
Peabody Coal Company	19	1-2-4	147,451	395,238		95,730		638,419	22	63		15		100
Peabody Coal Company	25	4				188,101		188,101				100		100
Peabody Coal Company	43	3			297,744			297,744			100			100

Peabody Coal Company	47	3			454,919			454,919			100			100
Puritan Coal Company		2		5,792				5,792		100				100
Rex Coal Company		4				205,123		205,123				100		100
Skaggs Coal Company		2-5		3,244			2,124	5,368		60			40	100
Spillerton Coal Company		1	1,300					1,300	100					100
Wallace Coal Company		5					88,521	88,521					100	100
Wasson Coal Company	1	3			318,139			318,139			100			100
Wasson Coal Company	2	3			22,159			22,159			100			100
Total all mines			408,420	4,450,485	2,051,052	2,261,734	1,687,953	10,859,644	4	41	19	21	15	100
All joint mines			407,120	4,142,499	61,238	1,867,814	1,513,389	7,992,060	5	52	1	23	19	100
Mines joint with I. C			407,120	4,133,598	61,238	1,867,814	1,509,136	7,978,906	5	52	1	23	19	100

Authority for tons shipped: Table 19, pages 65 and 66, Coal Report of Illinois for 1931.
Explanation of origin roads: 1—C. & E. I.; 2—C., B. & Q.; 3—C., C.; C. & St. L.; 4—I. C.; 5—Mo. Pac.; 6—B. & O.

338 COAL TRADE ASSOCIATION OF INDIANA,
400 Opera House Block, Terre Haute, Indiana, March 1, 1933.

GENTLEMEN: At the hearing in I. & S. 3843, Coal from Indiana to Illinois, held before Examiner Trezise at Chicago on February 20th, it was agreed that this intervener would submit in the form of an exhibit a list of the origin points in the Brazil-Clinton, Linton-Sullivan, central and southern Illinois groups from which the mileages were computed in exhibits 8 and 9.

Accordingly, we have prepared and are enclosing copy of the exhibit in question. Three copies have been furnished to the Commission.

Yours very truly,

JONAS WAFFLE, *Managing Director.*

Messrs.:
J. T. Averitt, C., M., St. P. & P. R. R., Union Station, Chicago.
R. B. Battey, C., B. & Q. R. R., 547 West Jackson Blvd., Chicago.
J. A. Behrle, Alton R. R., 340 W. Harrison Street, Chicago.
C. B. Cardy, 332 So. Michigan Avenue, Chicago.
John A. Connors, C. & E. I. Ry., 724 McCormick Building, Chicago.
Leo P. Day, N. Y. C. R. R., 525 La Salle Street Station, Chicago.
R. P. DeCamp, I. C. R. R., 135 East 11th Place, Chicago.
J. E. Flansburg, C. & N. W. Ry., 400 West Madison Street, Chicago.
Guy A. Gladson, 1400 First National Bank Building, Chicago.
L. F. Malum, 343 South Dearborn Street, Chicago.
C. B. Mather, P. O. Box 1006, Rockford, Illinois.
J. T. Quisenberry, I. C. R. R., 135 East 11th Place, Chicago.
W. E. Rosenbaum, 933 Cotton Belt Building, St. Louis, Mo.
George Shafer, Illinois Commerce Commission, Springfield, Ill.
O. L. Taylor, C., M., St. P. & P. R. R., 888 Union Station, Chicago.
W. Y. Wildman, 307 North Michigan Avenue, Chicago.

339 *List of origin points in Brazil-Clinton, Linton-Sullivan, central and southern Illinois from which mileages shown in exhibits nos. 8 and 9 were computed*

BRAZIL-CLINTON

Initial carrier	Origin point	Initial carrier	Origin point
B. & O.	Brazil.	C. C. C. & St. L.	Fontanet.
	Coal Bluff.		Griff.
	Mecca.		St. Marys.
C. & E. I.	Brazil.		Terre Haute.
	Clinton.	Penna.	Brazil.
	Ehrmandale.		Centerpoint.
	Newport.		Macksville.
	Terre Haute.		Seelyville.
C. M. St. P. & P.	Blanford.		Staunton.
	Bradshaw.		Terre Haute.
	St. Bernice.		Turner.
	West Clinton.		

List of origin points in Brazil-Clinton, Linton-Sullivan, central, and southern Illinois from which mileages shown in exhibits nos. 8 and 9 were computed—Cont.

LINTON-SULLIVAN

Initial carrier	Origin point	Initial carrier	Origin point
C. & E. I.	Farmersburg.		Latta.
	Hymera.		Linton.
	Jackson Hill.		Sullivan.
	Kolsem.		Vicksburg.
	Mildred.	C. C. C. & St. L.	Clay City.
	Paxton.		Coal City.
	Peerless.		Daggett.
	Pimento.		Riley.
	Reliance.		Saline City.
	Seifert.	I. C.	Caledonia.
	Shelburn.		Cass.
	Standard		Dugger.
	Sullivan.		Linton.
C. I. & L.	Clay City.		Sullivan.
	Midland.		Victoria.
	Vicksburg.	Penna.	Bicknell.
	Victoria.		Bushrod.
C. M. St. P. & P.	Black Hawk.		Edwardsport.
	Coalmont.		South Linton.
	Hymera.		Westphalia.

CENTRAL ILLINOIS

Alton	Auburn.		W. Va. Coal Co., Henderson.
	Carlinville.		
	Chatham.	C., B. & Q.	Girard.
	Girard.		Litchfield.
	Green Ridge.		Panama.
	Green View.		Sorento.
	Lefton.		Thayer.
	Lincoln.		Virden.
	Middletown.	C., S. & St. L.	Citizen mine "A."
	Nilwood.		Citizen mine "B."
	Panther Creek.	C., C., C. & St. L.	Bethalto.
	Petersburg.		Henderson.
	Schoper.		Hillsboro.
	Selbytown.		Gillespie.
	Sherman.		Livingston.
	Springfield.		Maro.
	Tallula.		Nokomis.
	Thayer.		Witt.
	Virden.	I. C.	Assumption.
	Williamsville.		Bissell.
340 B. & O.	Keys.		Decatur.
	Pana.		Divernon.
	Pleasant Plains.		Lincoln.
	Springfield.		Mount Olive.
	Taylorville.		Mowequa.
C. & E. I.	Hillsboro.		Pana.
	Livingston.		Springfield.
	Nokomis.	Ill. Term.	Auburn.
	Pana.		Carlinville.
	Witt.		Edwardsville.
C. & I. M.	Andrew.		Gillespie.
	Athens.		Riverton.
	Auburn.		Springfield.
	Callaway.	I. & M.	Edwardsville.
	Humphrey.		Staunton.
	Kincaid.		Warden.
	Petersburg.	N. Y. C. & St. L.	Coffeen.
	Springfield.		Panama.
	Taylorville.		Sorento.
C. & N. W.	Allen.	Penna.	Decatur.
	Archer.	Spr. Term.	Colliery.
	Barr.	Wabash.	Edwardsville.
	Compro.		Litchfield.
	Consolidated mine #14.		Mt. Olive.
	Girard.		Riverton.
	Green Valley.		Springfield.
	Hubly.		Staunton.
	Lick.		Stonington.
	Luther.		Taylorville.
	Siding no. 3.		
	Sweetwater.		
	Virden.		

List of origin points in Brazil-Clinton, Linton-Sullivan, central, and southern Illinois from which mileages shown in exhibits nos. 8 and 9 were computed—Cont.

SOUTHERN ILLINOIS

Initial carrier	Origin point	Initial carrier	Origin point
C. & E. I.	Benton.		Jeffries.
	Johnston City.		Johnston City.
	Marion.		Marion.
	Mt. Vernon.		Oraville.
	Orient.		Orient.
	Spillertown.		Royalton.
	West Frankfort.		Vergennes.
C., B. & Q.	Christopher.		West Frankfort.
	Freeman.		Zeigler.
	Herrin.	Mo. Pac.	Benton.
	Jeffries.		Buckner.
	Orient.		Bush-Hurst.
	Royalton.		Christopher.
	Sesser.		Clifford.
	West Frankfort.		Energy mine 5.
	Zeigler.		Freeman.
341 C., C., C. & St. L.	Carrier Mills.		Herrin.
	Eldorado.		Jeffries.
	Harco.		Johnston City.
	Harrisburg.		Orient.
	Ledford.		Royalton.
	Norris City.		West Frankfort.
I. C.	Benton.		Zeigler.
	Birkner's Spur.		Black Briar.
	Buckner.		Franco mine 2 and 3.
	Cambria.		Keystone mine.
	Carterville.		New Bruce mine.
	Christopher.		Orchard mine.
	Clifford.		Pittsburg.
	Eldorado.		Mt. Vernon.
	Galatia.		Tamaroa.
	Herrin.		Waltonville.

342 [Report and order of the commission omitted. Printed side page. 13 ante.]

344 ORDER

At a session of the Interstate Commerce Commission, division 2, held at its office in Washington, D. C., on the 8th day of November, A. D. 1933.

Investigation and Suspension Docket No. 3843

Coal from Indiana to Illinois

It appearing, That by order dated December 22, 1932, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order, and suspended the operation of said schedules until July 23, 1933, and that subsequently respondent voluntarily postponed the effective date of the schedules until January 23, 1934.

It further appearing, That a full investigation of the matters and things involved has been had, and that said division, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and

made a part hereof, and has found that respondents have justified the schedules under suspension.

It is ordered, That the order heretofore entered in this proceeding, suspending the operation of said schedules, be, and it is hereby, vacated and set aside as of November 23, 1933, and that this proceeding be discontinued.

By the Commission, division 2.

[SEAL] GEORGE B. McGINTY,
Secretary.

346 Before the Interstate Commerce Commission

I. & S. Docket No. 3843

Coal from Indiana to Illinois

Petition for rehearing, reargument and reconsideration before the entire Commission, and for an extension of the effective date of the order.

Comes now the Chicago, Milwaukee, St. Paul, and Pacific Railroad Company, respondent in the above entitled proceeding, and respectfully petitions the Commission to reconsider the above proceeding and to grant a rehearing and reargument before the entire Commission on the record made and in support of said petition, respectfully shows:

Division 2 in its report and order of November 8, 1933, misconstrued the law and the statutes and erred in the following particulars, to wit:

1. Division 2 required the cancellation of the proposed
346a schedules for the reason that the respondent had not justified the proposed reduced rates on bituminous coal and under the law the burden of justifying proposed schedules is on the carrier only when increases are proposed and the carrier is not required to assume the burden of proof in justifying reduced rates.

2. Division 2 required the cancellation of the proposed rates without findings that the proposed rates were unlawful in violation of any section of the Interstate Commerce Act.

3. That there were no facts in the record which would justify a finding that the proposed rates were in violation of any section of the Interstate Commerce Act.

4. Division 2 required the cancellation of the proposed reduced rates on coal from mines on petitioner's line in Indiana to destinations in northern Illinois over the single line of the petitioner, which proposed rates are relatively higher, distance considered, than the rates in which the petitioner is required to join for the movement of coal from mines in Illinois to the same destinations in northern Illinois.

5. Division 2 required the cancellation of the proposed rates, not for the reason that said proposed rates were unlawful, but for the reason that other carriers serving mines in the same Indiana mining districts and other Indiana mining districts might for competitive reasons proposed reduced rates over circuitous two- and three-line routes to the same destinations.

346b 6. Division 2 required the cancellation of the proposed reduced rates and gave consideration only to average distance mileages from all mines in the Brazil-Clinton and Linton-Sullivan districts in Indiana via the routes of all carriers to Rockford and Freeport, the two most distant stations named in the proposed schedules, and ignored the evidence of the lesser distances to the other destinations and gave no consideration to the evidence of the distances to the several destinations via the petitioner's single line short routes, although only the rates from mines on the line of respondent in the named Indiana groups were before the division in the proceeding.

7. The order is arbitrary and not supported by substantial evidence.

Wherefore, petitioner prays that this cause be reconsidered and that a rehearing and a reargument before the entire Commission be granted on the record made, and that the Commission enter an order extending the effective date of the order in this proceeding dated November 8, 1933, until such time as the matters presented in this petition shall have been determined and that the Commission enter such further order or orders in the premises as to it may seem reasonable and just.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

By ——— ———, *Its Attorneys.*

CHICAGO, ILLINOIS, *January 2, 1934.*

346c Argument in Support of Petition

By schedules filed to become effective on December 23, 1932, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter called the "Respondent", proposed reduced rates on bituminous coal in carloads from mines on its line in the Brazil-Clinton and Linton-Sullivan origin groups in Indiana to thirty-eight destinations on its line in northern Illinois. Upon protest filed by the Illinois Commerce Commission, certain competing carriers serving mines in Illinois and individual operators and coal-mining organizations in Illinois, the schedules were suspended. By report and order of the Commission, division 2, dated November 8, 1933, the respondent was required to cancel the proposed schedules on or before January 22, 1934. We earnestly urge that said report and order were erroneous and arbitrary and should be set aside, and that an order should be entered permitting the proposed schedules to become effective.

I

The commission erred in requiring the respondent to assume the burden of proof in justifying the proposed reduced rates

Without a finding that the rates proposed were unlawful, in violation of any section of the Interstate Commerce Act, the report
346d concludes with the statement: "We find that the proposed schedules have not been justified." Clearly, the schedules were required to be canceled because, in the opinion of the division, the respondent had not met the burden of affirmatively showing that the rates proposed did not violate some section of the Interstate Commerce Act. No such burden is placed on the carrier by the statute when it proposes reduced rates.

Section 15, paragraph 7, of the Interstate Commerce Act reads in part as follows: "At any hearing involving a rate, fare, or charge increased after January 1, 1910, or of any rate, fare, or charge sought to be increased after the passage of this act, the burden of proof to show that the increased rate, fare, or charge, or proposed rate, fare, or charge is just and reasonable shall be upon the carrier, * * *." In all other cases the burden is upon the party making the attack on the rate. Anchor Coal Company v. United States, 25 Fed. (2nd) 462, at page 474; Atchison, Topeka & Santa Fe Railway Company v. United States, 279 U. S. 768, at page 773.

346e II

The order should be set aside as the commission failed to make findings that the proposed schedules of rates were in violation of the Interstate Commerce Act.

Section 15, paragraph 7, of the Interstate Commerce Act authorizes the Commission to suspend the proposed schedule of rates and "to enter upon a hearing concerning the lawfulness of such rate." The Commission is only empowered to require the cancellation of rates where they are shown to be unlawful, and the Commission cannot require schedules of rates to be canceled without a finding that the proposed rates are unreasonable, in violation of Section 1, or unlawful in violation of some other section of the act.

The Supreme Court has repeatedly commented on the necessity that the Commission make appropriate findings to support its order so that the parties and the courts, if called upon to review the order, will know upon what conclusions the Commission based its order, and can determine whether or not the Commission acted within its statutory authority.

In Florida v. United States, 282 U. S. 194, the Supreme Court reviewed an order of the Interstate Commerce Commission entered under Section 13, fixing rates on logs intrastate within Flor-

346f ida. The order was not accompanied by appropriate findings, and the Supreme Court through Mr. Justice Hughes, on page 215, said:

"The question is not merely one of the absence of elaboration or of a suitably complete statement of the grounds of the Commission's determination, to the importance of which this Court has recently adverted (The Beaumont, Sour Lake & Western Railway Company v. United States, ante, p. 74), but of the lack of the basic or essential findings required to support the Commission's order. In the absence of such findings, we are not called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit. The Commission is the fact-finding body and the Court examines the evidence not to make findings for the Commission but to ascertain whether its findings are properly supported."

In Beaumont, Sour Lake & Western Railway Company v. United States, 282 U. S. 74, the court criticized the findings of the Commission and expressed the reason for the necessity of appropriate findings at page 86:

"The Commission's failure specifically to report the facts and give the reasons on which it concluded that under the circumstances the use of the average or group basis is justified leaves the parties in doubt as to a matter essential to the case and imposes unnecessary work upon the courts called upon to consider the validity of the order.

Complete statements by the Commission showing the grounds upon which its determinations rest are quite as necessary as are opinions of the courts setting forth the reasons on which they

346g base their decisions in cases analogous to this. Wichita R. R. v. Public Utilities Commission, 260 U. S. 48, 58. And we have recently emphasized the duty of such courts fully to state the grounds upon which they act. Virginian Ry. v. United States, 272 U. S. 658, 675; Lawrence v. St. Louis San Francisco Ry., 274 U. S. 588, 591–592; Arkansas Commission v. C. R. I. & P. Ry Co., 274 U. S. 597, 603; Hammond v. Schappi Bus Line, 275 U. S. 164, 171; Cleveland C. C. & St. L. Ry. Co. v. United States, 275 U. S. 404, 414; Baltimore & Ohio R. Co. v. United States, 279 U. S. 781, 787."

Mr. Justice Cordoza, in Norwegian Nitrogen Products Company v. United States, 288 U. S. 294, at page 319, expressed the rule governing regulatory bodies in fixing rates as follows:

"The 'hearing' that such Commission are to give must be adapted to the consequences that are to follow, to the attack and the review to which their orders will be subject. Interstate Commerce Commission v. Louisville & N. R. Co., 227 U. S. 88, 93, 57 L. Ed. 431, 434, 33 S. Ct. 185; United States ex rel. St. Louis S. W. R. Co. v. Interstate Commerce Commission, 264 U. S. 64, 68 L. Ed. 656, 44 S. Ct. 294; Atchison, T. & S. F. Ry. Co. v United States, 284 U. S. 248, 76 L. Ed. 273, 52 S. Ct. 146. The Commerce Act, as it stands today, and kindred statutes in the States, are instinct with the recognition of a

duty to give a hearing of such a kind that the courts will understand why a Commission has acted as it has if their supervisory powers are afterwards invoked for enforcement or revision."

346h The report in this proceeding contains no findings that the rates proposed were unlawful and there was no evidence in the record which would support such a finding had one been made. In the absence of evidence and appropriate findings the Commission is not empowered by statute to require the cancellation of the rates. The principle was clearly announced by the Supreme Court in Texas & Pacific Railroad Company v. United States, 77 L. Ed., page 1410, where the court says on page 1419:

"The evidence failed to show that the rates of the Texas & Pacific and the L. R. & N. on export and import shipments to and from New Orleans were not compensatory. The Commission refused to find that they were so low as to cast a burden on other traffic. There was therefore no basis for an order fixing minimum reasonable rates under sec. 15 (1) of the act."

The Commission fell into the error of requiring the rates to be canceled, not because they were found to be unlawful but because in the opinion of the Commission the respondent had not proved that the proposed rates were lawful.

346i III

The order of the Commission requires the respondent to move coal over its single line railway from mines on its railroad to the destinations in northern Illinois at rates which are relatively higher than those rates in which it is required to join in the movement of coal from mines in Illinois to the same destinations

The order is arbitrary and unlawful in that it requires the respondent to move coal from mines located on its railroad to the destinations named at rates which, distance considered, are relatively higher than those rates in which it is required under an order of the Illinois Commerce Commission to join in the movement of coal from Illinois mines to the same destinations. This Commission in Intrastate Rates on Bituminous Coal in Illinois, 182 I. C. C. 537, refused to require the Illinois rates to be increased. The result is that the shippers of coal from mines on the respondent's line in Indiana are required to pay relatively higher rates than those which the respondent assesses for the movement of coal over its line from mines in Illinois to the same destinations. The Commission cannot require the carriers to do that which they could not lawfully do voluntarily. Texas & Pacific Ry. Co. v. United States, 77 L. Ed., page 1410, at page 1422.

346j The order is further void in that it deprives the respondent of the right to move coal over its line in competition with other carriers transporting coal from other mining districts to the same destinations. The Commission cannot arbitrarily deprive a carrier of its right to meet competition.

The court said in Texas & Pacific Ry. Co. v. United States, 77 L. ed. 909, at page 1421:

"As the carriers are in competition for the business they may within zone of reasonableness prescribed by statute, adjust their rates so as to obtain or retain desired traffic for their own lines."

In this proceeding without any finding that the rates proposed are not "within the zone of reasonableness prescribed by statute", the Commission denies this respondent of its right to meet competition in the movement of coal.

IV

The Commission required the cancellation of the proposed schedules, not because they were unlawful, but because some other carriers serving Indiana mining districts might propose reduced rates over circuitous two- and three-line routes which would be "below the reasonable level of rates in the territory"

The Supreme Court has repeatedly held that where a hearing is authorized by the statute the Commission must determine the
346k case on the evidence offered at the hearing. There was no evidence that any other carrier serving Indiana mines would reduce its rates in order to compete with respondent in the transportation of coal. The evidence indicated that the respondent transported from 95 to 99 percent of the coal moving from the named Indiana groups to Rockford and Freeport, and that the tonnage moved by other carriers was inconsequential.

Certainly the respondent should not be denied the right of transporting coal over its single line from mines on its railroad in the Clinton district to Rockford, a distance of 231 miles, simply because the Pennsylvania Railroad could not economically at the same rate transport coal from its mines in the Brazil-Clinton district to Rockford, a distance of 332 miles via the Pennsylvania and the Illinois Central Railroads. The respondent is entitled to its geographical advantage, and competing carriers in the territory should only be permitted to compete at the same rate when they can do so profitably over their circuitous routes (exhibit 8). The fear that other carriers might for competitive reasons attempt to establish unreasonably low rates is not supported by any evidence in the record, and the record affirmatively shows that as to many of the destinations, to-wit: Forreston, Byron, Davis Junction, Kirkland, and Genoa, the carriers do not now publish uniform rates from the named Indiana groups (exhibit 8).

346l Certainly the assumption on the part of the Commission not supported by any evidence that other carriers might for competitive reasons propose unduly low rates, is no justification for an order requiring the proposed rates to be canceled in the absence of a finding that the proposed rates are unlawful. The Commission has within its power to pass upon the lawfulness of proposed rates when

they are published. Division 2 said: "While it may be, as the Milwaukee states, that the rate situation as between the two Indiana groups and the Illinois groups is in need of correction. * * * We are convinced that any change in the present relationships in the Indiana-Illinois adjustment to these northern Illinois destinations should not be undertaken in the piecemeal manner here proposed."

The respondent has no control over the rate which other carriers serving Indiana mines may desire to establish. The only way the respondent can protect its interests and its traffic is by proposing rates which, in its judgment, are necessary to move the traffic. If these rates are not unduly low or unduly high, or otherwise unlawful, they should be permitted to become effective.

346m

V

The division gave consideration only to average distances from all mines in the two Indiana districts via all routes to Rockford and Freeport, and ignored the evidence as to the distances from the mines on the respondent's railway in Indiana to the thirty-eight destinations named

The division considered only average distances from all mines in the named Indiana groups to Rockford and Freeport, the most distant destinations named in the proposed schedules. This appears from sheets 3 and 4 of the mimeographed report. The Commission had before it only the rates from mines on the respondent's line to the destinations named, and in determining the lawfulness of the rates, the Commission should properly consider the mileage and distances involved in the movement of this coal, and the lawfulness of the proposed rates could not properly be determined by ignoring that evidence and using average distances over routes from all mines in the origin groups to only two of the named destinations.

346n

VI

The order of the Commission is arbitrary and not supported by substantial evidence

We respectively submit that the order requiring the cancellation of the proposed schedules was not supported by substantial evidence. In addition to other facts herein pointed out the division commented upon exhibit 43, introduced by the Illinois Central Railroad Company, which contained figures showing numbers of tons of bituminous coal moved from mines in Illinois, Indiana, and west Kentucky to Rockford, Illinois, during the years 1929, 1930, 1931, and 1932. The exhibit was criticized by the respondent in that it was claimed that it was incorrect. The Commission declined to accept the criticism of the respondent without a more definite showing. The facts, however, as shown by the exhibit are these: That in 1930 the total tonnage of coal moved to Rockford from the named origins was 371,985

tons, and in 1932, 268,855 tons, or a reduction of more than 25 percent. The figures further show that the total tonnage of coal moved from Illinois mines to Rockford in 1930 was 209,781 tons and in 1932, 157,681 tons, or a reduction of about the same amount in percentage; while the total tonnage from the Brazil-Clinton and Linton-Sullivan groups to Rockford during the year 1930 was 88,443 tons, and the total tonnage from the two Indiana groups to Rockford during the year 1932 was 44,270 tons, or a reduction of approximately 50 percent.

346o Certainly if exhibit no. 43 has any value, it shows that the two groups in Indiana from which the respondent moves coal have been placed under some disadvantage since 1930, the year the Illinois rates were reduced.

CONCLUSION

We respectfully urge that the Commission reconsider this proceeding and grant a reargument and that the order entered herein be set aside and that an order be entered authorizing the proposed schedules to become effective.

Respectfully submitted.

J. N. DAVIS,
C. L. TAYLOR,
Attorneys for the Respondent.

CHICAGO, ILLINOIS, *January 2, 1934.*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing petition for rehearing, reargument, and reconsideration, and argument in support thereof, upon all parties of record in this proceding, by mailing a copy thereof, properly addressed to each party.

Dated this 30 day of December 1933.

C. L. TAYLOR,
Of Counsel.

347 ORDER

At a session of the Interstate Commerce Commission, division 2, held at its office in Washington, D. C., on the 5th day of January, A. D. 1934

Investigation and Suspension Docket No. 3843

Coal from Indiana to Illinois

Order postponing effective date

Upon further consideration of the record in the above-entitled proceeding, and upon consideration of that part of petition of respondent for rehearing, reargument, and reconsideration by which postponement of the effective date of the order is sought:

It is ordered, That the effective date of the corrected order entered in this proceeding of November 8, 1933, be, and it is hereby, postponed from January 22, 1934, to February 22, 1934.

By the Commission, division 2.

[SEAL] GEORGE B. McGINTY,
Secretary.

348 ORDER

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 5th day of February, A. D. 1934

Investigation and Suspension Docket No. 3843

Coal from Indiana to Illinois

Order denying petition for rehearing, etc.

Upon further consideration of the record in the above-entitled proceeding, and of petition of respondent for rehearing, reargument, and reconsideration;

It is ordered, That the said petition be, and it is hereby, denied.

By the Commission.

[SEAL] GEORGE B. McGINTY,
Secretary.

349 In United States District Court

[Title omitted.]

Notice of appeal

Filed August 6, 1934

To The Chicago, Milwaukee, St. Paul & Pacific Railroad Company and Binkley Coal Company, et al., plaintiffs:

Please take notice that, pursuant to the statutes and rules of court in such case made and provided, the United States of America, defendant, the Interstate Commerce Commission, The Illinois Central Railroad Company, Chicago, Burlington & Quincy Railroad Company, The Alton Railroad Company, and L. W. Baldwin and Guy A. Thompson, trustees of the Missouri Pacific Railroad Company, intervening defendants, in the above-entitled cause, and each of them, do hereby appeal to the Supreme Court of the United States from the final order and decree of the District Court made and entered on the 21st day of June 1934, which set aside, annulled, suspended, and permanently enjoined a certain order of the Interstate Com-
350 merce Commission in the proceeding entitled "I. & S. Docket 3843, Coal from Indiana to Illinois", filed April 18, 1934, wherein the Commission refused to permit the Milwaukee Railroad to establish the reduced rates therein provided for.

August 6, 1934.

Dwight H. Green, United States Attorney; Harold M. Stephens, Assistant Attorney General; Elmer B. Collins, Special Assistant to the Attorney General, for the United States of America. Daniel W. Knowlton, E. M. Reidy, for the Interstate Commerce Commission. H. H. Larimore, Walter McFarland, Guy A. Gladson, Elmer A. Smith, J. T. Quisenberry, for intervening railroad, defendants.

Service of the foregoing notice of appeal and the receipt of a copy thereof are hereby acknowledged this 16th day of August, 1934.

CARSON L. TAYLOR,
Solicitor for Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Plaintiff.

E. B. WILKINSON,
Attorney for Binkley Coal Company et al., Interveners.

351 In United States District Court

Notice to Attorney General of the State of Illinois

Filed August. 6. 1934

To the Honorable OTTO KERNER,
Attorney General of the State of Illinois:

Pursuant to Urgent Deficiencies Act of October 23. 1913. 38 Stat. 221, you are hereby notified that the defendant, United States of America, and the Interstate Commerce Commission, the Illinois Central Railroad Company, Chicago, Burlington & Quincy Railroad Company, The Alton Railroad Company, and L. W. Baldwin and Guy A. Thompson, Trustees of the Missouri Pacific Railroad Company, intervening defendants, in the above-entitled cause, have taken an appeal to the Supreme Court of the United States from the final decree of the United States District Court, entered June 21, 1934, and the order allowing the appeal makes the same returnable within forty days from the date thereof.

352 Dwight N. Green, United States Attorney; Harold M. Stephens, Assistant Attorney General; Elmer B. Collins, Special Assistant to the Attorney General; for the United States of America. Daniel W. Knowlton, E. M. Reidy, for Interstate Commerce Commission. H. H. Larimore, Walter McFarland, Guy A. Gladson, Elmer A. Smith, J. T. Quisenberry, for intervening railroad defendants.

Service of a copy of the foregoing notice is hereby acknowledged this 18th day of July, 1934.

OTTO KERNER,
Attorney General,
State of Illinois.

353 In United States District Court

[Title omitted.]

Petition for appeal

Filed August 6, 1934

The United States of America, defendant, the Interstate Commerce Commission, The Illinois Central Railroad Company, Chicago, Burlington & Quincy Railroad Company, The Alton Railroad Company, and L. W. Baldwin and Guy A. Thompson, Trustees of the Missouri Pacific Railroad Company, intervening defendants, in the above-entitled cause, feeling themselves aggrieved by the final decree of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered in said Court June 21, 1934, pray an appeal from said decree to the Supreme Court of the United States.

The particulars wherein they consider the decree erroneous are set forth in the assignment of errors, accompanying this petition and to which reference is hereby made.

354 Said defendants pray that a transcript of record, proceedings and papers on which said decree was made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

Dated August 6, 1934.

Dwight H. Green, United States Attorney; Harold N. Stephens, Assistant Attorney General; Elmer B. Collins, Special Assistant to the Attorney General; for the United States of America. Daniel W. Knowlton, E. M. Reidy, for the Interstate Commerce Commission. H. H. Larimore, Walter McFarland, Guy A. Gladson, Elmer A. Smith, J. T. Quisenberry, for intervening railroad defendants.

355 In United States District Court

[Title omitted.]

Assignment of errors

Filed August 6, 1934

Now come the United States of America, defendant, and Interstate Commerce Commission, the Illinois Central Railroad Company, Chicago, Burlington & Quincy Railroad Company, The Alton Railroad Company, and L. W. Baldwin and Guy A. Thompson, Trustees of the Missouri Pacific Railroad Company, intervening defendants, in the above-entitled cause, by their respective counsel and in connection with their appeal, file the following assignment of errors upon which they will rely in the prosecution of their appeal

to the Supreme Court of the United States from the final decree of this court entered June 21, 1934.

The District Court erred:

(1) In holding and deciding that the order of the Interstate Commerce Commission of November 8, 1933, as affirmed by the order of April 18, 1934, is not supported by substantial evidence.

(2) In holding and deciding that there was no substantial evidence in the record to justify a finding by the Interstate
356 Commerce Commission that the rates proposed were unlawful in violation of the Interstate Commerce Act.

(3) In holding that there was no evidence to show that the proposed rates in and of themselves are unreasonable.

(4) In holding and deciding that there is no evidence in the record that the present rate structure is fair or that it is reasonable; no evidence that its disruption would necessarily lead to the introduction of unfair or unreasonable rates.

(5) In holding and deciding that there is no evidence that the proposed rates of the Milwaukee will interfere with adequate and efficient railway service.

(6) In holding and deciding that there is nothing in Section 15a (2) of the Interstate Commerce Act, as amended by the Emergency Railroad Transportation Act, 1933, "authorizing the Commission to establish rates above a reasonable minimum for one railroad merely to enable another railroad in the group not so well situated, to earn a fair return, even if the Act of 1920, did so provide."

(7) In holding and deciding that there is no evidence in the record that the proposed rates of the Milwaukee if allowed to stand will so affect the earning capacity of any other railroad.

(8) In finding that the order of the Interstate Commerce Commission here attacked is unfair and discriminates against the plaintiff.

(9) In not holding and deciding that the Commission's order of November 8, 1933, as amended by its order of April 18, 1934, is supported by substantial evidence.

357 (10) In not holding and deciding that there was substantial evidence in the record to justify a finding by the Interstate Commerce Commission that the rates proposed were unlawful in violation of the Interstate Commerce Act.

(11) In entering a decree setting aside the order of the Interstate Commerce Commission and enjoining the enforcement of said order.

(12) In not dismissing the bill of complaint.

Dated August 6, 1934.

Dwight H. Green, United States Attorney; Harold M. Stephens, Assistant Attorney General; Elmer B. Collins, Special Assistant to the Attorney General, for the United States of America. Daniel W. Knowlton, E. M. Reidy, for Interstate Commerce Commission. H. H. Larimore, Walter McFarland, Guy A. Gladson, Elmer A. Smith, J. T. Quisenberry, for intervening railroad defendants.

358 In United States District Court

[Title omitted.]

Order allowing appeal

Aug. 6, 1934

In the above-entitled cause, the United States of America, defendant, and the Interstate Commerce Commission, the Illinois Central Railroad Company, Chicago, Burlington & Quincy Railroad Company, the Alton Railroad Company, and L. W. Baldwin and Guy A. Thompson, trustees of the Missouri Pacific Railroad Company, intervening defendants, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final decree of this court in this cause entered June 21, 1934, and having also made and filed an assignment of errors, and a statement of jurisdiction, and having in all respects conformed to the statutes and rules of court in such case made and provided, it is

Ordered and decreed that the appeal be, and the same is hereby, allowed as prayed for.

WALTER C. LINDLEY,
United States District Judge.

Dated August 6, 1934.

359 In United States District Court for the Northern District of Illinois, Eastern Division

In Equity, No. 13726

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

Summons and severance

Filed August 6, 1934

To the Chicago & Illinois Midland Railway Company:

You are hereby invited to join with the United States, defendant, Interstate Commerce Commission, Illinois Central Railroad Company, Chicago, Burlington & Quincy Railroad Company, the Alton Railroad Company, and L. W. Baldwin and Guy A. Thompson, trustees of the Missouri Pacific Railroad Company, intervening defendants, in an appeal to the Supreme Court of the United States which they will seasonably prosecute from the final decree of the District Court entered June 21, 1934, setting aside, annulling, and

enjoining the enforcement of the order of the Interstate Commerce Commission in the proceeding entitled I. & S. Docket No. 3843, Coal from Indiana to Illinois, in the above-entitled cause, in which you are an intervening defendant.

In the event of your failure to join, the United States, Interstate Commerce Commission, Illinois Central Railroad Company, Chicago, Burlington & Quincy Railroad Company, the Alton Railroad
360 Company, and L. W. Baldwin and Guy A. Thompson, trustees of the Missouri Pacific Railroad Company, will prosecute the appeal for the reversal of said final decree of the District Court without joining you.

August 6, 1934.

Dwight H. Green, United States Attorney; Harold M. Stephens, Assistant Attorney General; Elmer B. Collins, Special Assistant to the Attorney General; for the United States of America. Daniel W. Knowlton, E. M. Reidy, for the Interstate Commerce Commission. H. H. Larimore, Walter McFarland, Guy A. Gladson, Elmer A. Smith, John T. Quisenberry, for intervening railroad defendants.

Service of the foregoing summons and severance and the receipt of a copy thereof are hereby acknowledged this ' day of August 1934.

J. T. QUISENBERRY,
Attorney for Chicago & Illinois Midland Railway Company.

361 In United States District Court for the Northern District of Illinois, Eastern Division

No. 13726

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY
vs.
UNITED STATES OF AMERICA, THE ALTON RAILROAD CO.

Bill to set aside order of Interstate Commerce Commission.

For Plaintiff: O. W. Dynes, M. L. Bluhm, C. L. Taylor.

For Defendants: Dwight H. Green, U. S. Atty., Gallagher, Rinaker, Wilkinson & Hall—For Intervening Petitioners: Winston, Strawn & Shaw, J. T. Quisenberry, E. A. Smith & Walter McFarland, Daniel W. Knowlton & J. Stanley Payne.

Month, day, year	Filings—Proceedings
Feb. 14, 1934	Filed bill of complaint and copies.
" 14, "	Application for preliminary or interlocutory injunction set for hearing February 21, 1934, 10 a.m., before Judges Evans, Barnes, & Holly; draft; Barnes, J.
" 14, "	Filed security for costs.
" 20, "	Filed notice.
" 20, "	Leave to file intervening petition on behalf of the Binkley Mining Co. et al.; Barnes, J.
" 20, "	Filed intervening petition of the Binkley Mining Co. et al. & copy.
" 21; "	Filed notice.

Month, day, year	Filings—Proceedings
Feb. 21, 1934	By agreement application for preliminary and interlocutory injunction continued to March 15, 1934, without further notice; draft; Judges Evans, Barnes, & Holly.
Mar. 9, "	Filed notice.
" 9, "	Filed petition the Alton Railroad Co. for leave to intervene.
" 9, "	Leave to the Alton Railroad Co. to file intervening petition and become party defendant; 6 days to plead; draft; Barnes, J.
" 15, "	Filed notice.
" 15, "	By order of court application for temporary injunction continued to April 10, 1934, 10 a.m.; Judges Evans, Barnes, and Holly.
" 15, "	Filed answer of the Alton Railroad Co. and copy.
362 Mar. 15, 1934	Filed intervention of Interstate Commerce Commission.
Mar. 15, 1934	Filed petition of Illinois Central Railway Co., Chicago & Illinois Midland Railway Co., Chicago, Burlington & Quincy Railway Co., L. W. Baldwin and Guy A. Thompson, trustees of Missouri Pacific Railway Co. for leave to intervene.
" 15, "	Filed answer of United States of America and copies.
" 24, "	Filed answer and copy of Illinois Central Railway Co., Chicago & Illinois Midland Railway Co., Chicago, Burlington & Quincy Railway Co., and L. W. Baldwin and Guy A. Thompson, trustees of Missouri Pacific Railway Co.
Apr. 10, "	By agreement motion for interlocutory injunction continued to April 20, 1934, without further notice; draft; Evans, Barnes, & Holly.
" 20, "	Cause called for trial; evidence heard and concluded; arguments heard and concluded; and advisement. Parties to file suggested findings of fact and conclusions of law and briefs. Defendants granted 10 days to file their suggested findings of fact and conclusions of law and brief; enter interlocutory injunction; draft; Evans, Barnes and Holly, judges.
" 30, "	Filed brief for United States and Interstate Commerce Commission.
" 30, "	Filed brief and argument on behalf of intervening defendant railroads.
May 3, "	Filed defendant's findings of fact and conclusions of law.
" 5, "	Filed answer of Interstate Commerce Commission.
" 11, "	Filed amended answer of Interstate Commerce Commission.
June 13, "	Filed memorandum of court.
" 13, "	Enter findings of fact and conclusions of law; draft; Judges Evans, Barnes, and Holly.
" 14, "	Filed copy of decision from appeal to United States Supreme Court.
" 14, "	Filed brief for United States and Interstate Commerce Commission.
" 14, "	Filed defendant's findings of fact and conclusions of law.
April 30, "	Filed briefs and argument on behalf of intervening railroad defendants.
June 14, "	Filed brief and argument on behalf of plaintiff.
" 14, "	Filed supplemental brief on behalf of plaintiff.
" 14, "	Filed reply brief for plaintiff.
" 14, "	Filed brief and argument on behalf of Binkley Mining Co. at al.
363 June 14, 1934	Filed findings of fact and conclusions of law submitted by Binkley Mining Co. et al.
Mar. 21, 1934	Enter final decree; interlocutory injunction entered April 20, 1934, made permanent and United States and Interstate Commerce Commission permanently restrained from enforcing order of Interstate Commerce Commission; draft; Judges Evans, Barnes, and Holly.
Aug. 6, "	Filed notice of appeal.
" 6, "	Filed petition of United States and intervening railroads for appeal.
" 6, "	Order allowing appeal; draft; Lindley, J.
" 6, "	Filed assignment of errors.
" 6, "	Filed citation on appeal.
" 6, "	Filed praecipe for transcript of record.
" 6, "	Filed notice to attorney general of Illinois.
" 6, "	Filed notice.
" 6, "	Filed summons and severance.
" 6, "	Filed statement as to jurisdiction on appeal.
" 6, "	Filed stipulation re transcript of record.
" 6, "	Filed stipulation re supplemental pleadings.
" 6, "	Order approving narrative statement of evidence; draft; Lindley, J.
" 6, "	Filed narrative statement of evidence.

363a

In United States District Court

[Title omitted.]

Praecipe for transcript of record

Filed Aug. 6, 1934

To the Clerk:

Please prepare a transcript of the record in the above-entitled cause for the purposes of the appeal herein filed and allowed, including therein the following papers and proceedings, to wit:

1. Notice of filing of bill of complaint and that hearing on application for interlocutory injunction has been set at Chicago, Ill., February 21, 1934.

2. Bill of complaint and exhibit A thereto attached.

3. Order of court of February 21, continuing hearing until March 15, 1934.

4. Petition of February 20, 1934, of Binkley Coal Company for leave to intervene as plaintiff.

5. Answer of United States, filed March 15, 1934.

6. Intervention of Interstate Commerce Commission, filed March 15, 1934.

6a. Order designating Judge Lindley as district judge.

364 7. Amended answer of Interstate Commerce Commission and appendix 1 thereto attached, filed May 11, 1934.

8. Petition of Illinois Central Railroad Company et al., filed March 15, 1934, for leave to intervene as parties defendant, and order of court allowing such intervention.

9. Answer of Illinois Central Railroad Company et al., filed March 24, 1934.

10. Petition of Alton Railroad Company for leave to intervene as a party defendant.

11. Order of court allowing such intervention.

12. Answer of Alton Railroad Company, filed March 15, 1934.

13. Order of court fixing hearing on April 20, 1934.

14. Order for interlocutory injunction, dated April 20, 1934.

15. Stipulation filed August 6, 1934, re supplemental pleadings.

16. All appropriate docket entries in their proper order.

17. Opinion of district court, filed June 13, 1934.

18. Findings of fact and conclusions of law, filed June 13, 1934.

19. Final decree, entered June 21, 1934.

365 20. Stipulation of August 6, 1934, including narrative of testimony and other documents that were submitted to the Commission and introduced in the district court, and order approving the stipulation. These other documents consist of:

(a) Protest of Illinois Coal Traffic Bureau, filed December 13, 1932;

(b) Protest of the Consolidated Coal Company of St. Louis, filed December 14, 1932;

(c) Protest of Springfield, Illinois, Coal Traffic Bureau, filed December 15, 1932;

(d) Order of Interstate Commerce Commission dated December 22, 1932, instituting the investigation;

(e) Transcript of the stenographer's notes of the hearing held February 20 and 21, 1933, at Chicago, Ill., before Examiner Trezise, and of the exhibits filed at said hearing. (Not to be printed in full, but to be reduced to narrative form pursuant to equity rule 75);

(f) Petition for rehearing, reargument, and reconsideration before the entire Commission and for an extension of the effective date of the order, filed January 3, 1934;

(g) Order of Commission entered January 5, 1934, postponing effective date of order from January 22, to February 22, 1934;

(h) Order of Commission entered February 5, 1934, denying petition for rehearing, reargument, and reconsideration;

(i) Order of Commission entered February 20, 1934, postponing the effective date of its order until April 23, 1934;

(j) Order of Commission entered March 7, 1934, reopening the proceeding for reargument before it.

21. Petition for appeal.

22. Notice of appeal and acknowledgment of service.

23. Assignment of errors.

24. Summons and severance.

366 25. Order allowing appeal.

26. Notice to attorney general of the State of Illinois.

27. Citation on appeal.

28. Statement of jurisdiction of Supreme Court, together with notice and acknowledgment of service.

29. Praecipe for record.

Dwight H. Green, United States Attorney; Harold H. Stephens, Assistant Attorney General; Elmer B. Collins, Special Assistant to the Attorney General; for the United States of America. Daniel W. Knowlton, E. M. Reidy, for the Interstate Commerce Commission. H. H. Larimore, Walter McFarland, Guy A. Gladson, Elmer A. Smith, J. T. Quisenberry, for intervening railroad defendants.

367 [Clerk's certificate to foregoing transcript omitted in printing.]

368, 369 [Citation in usual form showing service on C. L. Taylor and E. B. Wilkinson filed Aug. 1934, omitted in printing.]

370 In Supreme Court of the United States

Statement of points to be relied upon and designation of the record to be printed

Filed Sept. 14, 1934

Come now the appellants and say that they will rely on the following points in brief and oral argument before this Court on their appeal in the above-entitled cause:

1. The Interstate Commerce Commission, in hearing and deciding the issues raised in the proceedings before it, proceeded pursuant to authority vested in it by Congress and in discharge of an administrative duty validly imposed upon it.

2. There was substantial evidence to support the findings and order of the Commission.

3. The District Court erred in holding and deciding that there is nothing in section 15a (2) of the Interstate Commerce Act, as

amended by the Emergency Railroad Transportation Act, 1933, authorizing the Commission to establish rates above a reasonable minimum for one railroad merely to enable another railroad in the group not so well situated, to earn a fair return, even if the Act of 1920, did so provide."

370a 4. The District Court erred in holding that the order of the Commission is unfair and discriminates against appellees.

5. The District Court exceeded its proper authority and judicial function in entering upon a determination, upon conflicting evidence, of the fact questions presented in the case before the Commission and thus usurped the administrative functions of the Commission.

6. The action of the Commission was not arbitrary or otherwise in disregard of its duty, and did not exceed the authority duly conferred upon it by statute.

7. The findings of the Commission were sufficient to justify its order, and being based upon substantial evidence and within the authority duly conferred upon the Commission by statute, its order should have been sustained by the District Court.

Appellants further state that the entire record in this cause as filed in this Court is necessary for consideration of the points set forth above.

Angus D. MacLean, Acting Solicitor General; Harold M. Stephens, Assistant Attorney General; Elmer B. Collins, Special Assistant to the Attorney General; for the United States of America. Daniel W. Knowlton, E. M. Reidy, for the Interstate Commerce Com-
370b mission. H. H. Larimore, Walter McFarland, Guy A. Gladson, Elmer A. Smith, J. T. Quisenberry, for intervening railroad defendants.

Service of a copy of the foregoing "Statement of points to be relied upon and designation of the record to be printed" acknowledged this 31st day of August, 1934.

O. W. DYNES,
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Intervening Coal Operators in Indiana.

370c [File endorsement omitted.]

File No. 39,007. D. C. U. S., N. Illinois. Term No. 379. The United States of America, the Interstate Commerce Commission, the Illinois Central Railroad Company, et al., appellants, vs. Chicago, Milwaukee, St. Paul & Pacific Railroad, Binkley Coal Company, et al. Filed September 14, 1934. File No. 379 O. T. 1934.

U. S. GOVERNMENT PRINTING OFFICE: 1934

In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 379

UNITED STATES OF AMERICA ET AL., APPELLANTS

v.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC Railroad Company et al.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ILLINOIS

STATEMENT AS TO JURISDICTION ON APPEAL

In compliance with Rule 12 of the Rules of the Supreme Court, appellants submit herewith their statement showing the basis of the jurisdiction of the Supreme Court of the above-entitled case on appeal.

STATUTES

Section 5 of the Commerce Court Act (c. 309, 36 Stat. 539; U.S. Code, Suppl. III, Tit. 28, Sec. 45a).

Section 238 of the Judicial Code, as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 936, 938, par. (4); U.S. Code, Tit. 28, Sec. 345).

Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 210, 219; U.S. Code, Tit. 28, Sec. 45 and 47a, Suppl. III).

DECREE

The decree sought to be reviewed was entered June 21, 1934.

The petition for appeal was filed and the order allowing the appeal was entered August 6, 1934.

THE NATURE OF THE CASE AND RULINGS BELOW

This suit was brought by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, plaintiff, and Binkley Coal Company et al., intervening plaintiffs, to enjoin, set aside, and annul an order of the Interstate Commerce Commission, made and entered November 8, 1933, as amended by its order of April 18, 1934, in a proceeding then pending before the Commission entitled "I. & S. Docket 3843, Coal from Indiana to Illinois", 197 I.C.C. 245; 200 I.C.C. 609.

This proceeding before the Commission was initiated by the Commission following protests filed with it requesting the Commission to suspend tariffs filed by the Milwaukee, to become effective on December 23, 1922, wherein that carrier proposed to reduce its rates on bituminous coal, in carloads, from mines on its line in the Brazil-Clinton and Linton-Sullivan origin groups in Indiana from $1.87 to $1.70 to Rockford, Ill., and from $1.92 to $1.75 to Freeport, Ill., or 17 cents per net ton in

each instance. Corresponding reductions were to be made in rates to intermediate points in Illinois, on the line of the Milwaukee, the principal intermediate points being shown in a footnote on page 618 of the Commission's decision of April 18, 1934.

Following these protests, the Commission, exercising the power conferred upon it by Section 15 (7) of the Interstate Commerce Act, suspended, by order dated December 22, 1932, the tariffs proposing the reductions until July 23, 1933. By this order the Commission also entered "upon a hearing concerning the lawfulness of rates, charges, regulations, and practices stated in the said schedules. * * *." By voluntary action of the Milwaukee the effective date was further postponed until January 23, 1934. In the meantime, the hearing referred to was had and on November 8, 1933, the Commission issued its report and order (*Coal from Indiana to Illinois,* 197 I.C.C. 245) finding the proposed reductions not justified, and directing that the suspended schedules be canceled on or before January 22, 1934, and the proceeding discontinued. On January 2, 1934, the Milwaukee filed a petition for rehearing, reargument, and reconsideration before the Commission, and for an extension of the effective date of the order. On January 5, 1934, the effective date of the order was postponed until February 22, 1934, but the Commission denied the petition in all other respects. Plaintiff then filed a petition in this Court, seeking to enjoin the order

of November 8, 1933. That petition was to have been heard on February 21, 1934, but the date for hearing was postponed from time to time until April 20, 1934. On February 20, 1934, the Commission further postponed until April 23, 1934, the effective date of the outstanding order, and on March 7, 1934, reopened the proceeding for argument before it.

Following such reargument, the report and order of April 18, 1934, was issued. This decision was attacked by supplemental pleadings. The theory of the complaint was that the Commission's order was unsupported by evidence and in excess of its statutory power.

Hearing was had before a statutory court of three judges. Findings of fact and conclusions of law were made and opinions rendered, the Court holding the action of the Commission to be unsupported by evidence and to be in excess of any authority conferred upon it by the Interstate Commerce Act. A final decree was entered June 21, 1934, permanently enjoining and setting aside the Commission's order.

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United States v. *Erie Railroad Co.*, 280 U.S. 98.

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For Intervening Railroad Defendants.

U. S. GOVERNMENT PRINTING OFFICE: 1934

FILE COPY

DEC 19 19

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1934.

No. 379

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ILLINOIS CENTRAL RAILROAD COMPANY, ET AL.,

Appellants,

vs.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, ET AL.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR RAILROAD APPELLANTS.

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H. H. LARIMORE,
FRANK H. TOWNER,
ELMER A. SMITH,
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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1934.

No. 379.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, *et al.*,

Appellants,

vs.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, *et al.*,

Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR THE APPELLANT RAILROADS, ILLINOIS CENTRAL RAILROAD COMPANY, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, ALTON RAILROAD COMPANY, AND L. W. BALDWIN AND GUY A. THOMPSON TRUSTEES, OF THE MISSOURI PACIFIC RAILROAD COMPANY.

OPINIONS BELOW.

The opinion of the specially-constituted District Court (R. 48) has not been reported. The reports of the Intertsate Commerce Commission (R. 7, 34) *Coal From Indiana To Illinois,* are published in 197 I. C. C. 245 and 200 I. C. C. 609.

Questions Presented.

The principal question presented is the validity of an order of the Interstate Commerce Commission, issued November 8, 1933, by Division 2, in a proceeding entitled *Investigation and Suspension Docket 3843, Coal From Indiana To Illinois* (R. 12), subsequently affirmed by the entire Commission on April 18, 1934, upon argument and reconsideration (R. 48), the effect of which was to require the cancellation of certain reduced rates on bituminous coal published by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company to apply from mines on its railroad in the Brazil-Clinton and Linton-Sullivan groups in Indiana to Rockford, Freeport and other points on its road in northern Illinois.

Subordinate questions are: (1) whether proposed reduced rates which would precipitate a general reduction in a rate structure not unreasonably high and result in the unnecessary dissipation of the revenues of the carriers in general and impair their ability to render adequate and efficient transportation service are unlawful and can be prohibited by the Commission; (2) whether the Commission's order was supported by adequate findings of fact; (3) whether the findings upon which the Commission's order was based were supported by substantial evidence; and (4) whether the Commission's order was arbitrary and exceeded the authority conferred upon it by statute.

Statutes Involved.

The statutory provisions involved are Section 1 (5), Section 15(1), Section 15(7) and Section 15a(2) of the Interstate Commerce Act. (49 U. S. C. 1(5), 15(1), 15(7) and 15a(2)) and are set forth in the appendix to this brief.

Statement.

This is a direct appeal from the final decree of the specially-constituted District Court for the Northern District of Illinois permanently enjoining and restraining enforcement of an order of the Interstate Commerce Commission, issued November 8, 1933 by Division 2 of the Commission in a proceeding entitled "Investigation and Suspension Docket 3843, *Coal From Indiana To Illinois*" and affirmed by the entire Commission on April 18, 1934, upon argument and reconsideration. The order required the appellee, Chicago, Milwaukee, St. Paul & Pacific Railroad Company, hereinafter called the Milwaukee, to cancel certain rate schedules which it had filed with the Commission proposing to reduce its carload rates applicable to the transportation of bituminous coal from the mines on its line in the Brazil-Clinton and Linton-Sullivan origin groups in Indiana to Rockford and Freeport, Illinois, and certain intermediate points in the latter state. The schedules (R. 60-63) were filed to become effective December 23, 1932 and reduced the rate of $1.87 per ton from the Brazil-Clinton group to both Rockford and Freeport to $1.70 per ton, and the rate from the Linton-Sullivan group to both Rockford and Freeport of $1.92 per ton to $1.75 per ton, reductions of 17 cents per ton in each instance. The other destinations, all likewise located on the Milwaukee railroad, are intermediate to Rockford and Freeport and the origin groups. The rates to Rockford and Freeport were observed as maxima in the schedules carrying the proposed reductions and resulted in reductions in rates by lesser amounts to the intermediate destinations than to Rockford and Freeport. Protests against these reduced rates were filed with the Interstate Commerce Commission by various operators of mines in the Illinois coal field which sell coal at Rockford, Freeport and the other destinations in northern Illinois in competition with the mines on the Milwaukee in the Brazil-Clinton and

Linton-Sullivan groups and by other railroads engaged in the transportation of coal from other mines in the Indiana, Illinois and western Kentucky fields to Rockford, Freeport and the other destinations involved, including the appellant railroads on whose behalf this brief is filed. (R. 64, 67, 69, 73). Following these protests, the Commission, exercising the power conferred upon it by Section 15(7) of the Interstate Commerce Act (49 U. S. C. 15(7)), by order dated December 22, 1932 (R. 71) suspended the tariffs proposing the reduction until July 23, 1933, and by the same order entered upon a hearing concerning the lawfulness of the rates stated in the schedules. The effective date of the schedules was further postponed from time to time. The hearing referred to was held February 20, 21, 1933 (R. 73) and on November 8, 1933, Division 2 of the Commission issued its report and order (R. 7) finding the proposed reductions not justified and directing that the schedules be canceled on or before January 22, 1934, and the proceeding be discontinued. On January 2, 1934, the Milwaukee filed a petition for rehearing, reargument and reconsideration before the Commission and an extension of the effective date of the order. (R. 223)

The Commission, by order of January 5, 1934, postponed the effective date of the order of November 8, 1933 to February 22, 1934 (R. 230) and by an order of the same date (R. 231) denied the respondent Milwaukee's petition for rehearing, reargument and reconsideration. Thereafter, on February 14, 1934, the Milwaukee filed a petition in the United States District Court for the Northern District of Illinois (R. 1) seeking to enjoin the enforcement of the order of November 8, 1933. That petition was to have been heard on February 21, 1934, but hearing was postponed from time to time until April 20, 1934. The Commission, by order of February 20, 1934, further postponed until April 23, 1934, the effective date of the outstanding order

of November 8, 1933. On March 7, 1934, the Commission reopened the proceeding for argument before the full Commission, which was had, and on April 18, 1934, the full Commission issued its report and order on argument and reconsideration affirming the prior report and order of Division of November 8, 1933. The report of the full Commission on argument and reconsideration of April 18, 1934, was filed in the proceedings in the District Court by the Interstate Commerce Commission as Appendix I to its answer therein. (R. 34) The railroad appellants upon whose behalf this brief is filed intervened as defendants in the suit in the District Court to set aside the Commission's order (R. 20, 24).

Hearing on both the application for an interlocutory injunction and the application for a permanent injunction was had before the specially-constituted District Court on April 20, 1934, at which the plaintiff below, the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, introduced a certified copy of the record and transcript of the proceedings before the Interstate Commerce Commission. The District Court, by order of the same date, granted an interlocutory injunction (R. 29) under the protection of which the reduced rates went into effect on April 23, 1934.

On June 13, 1934, the District Court in a memorandum opinion accompanied by formal findings of fact and conclusions of law (R. 48) held that the order of the Commission was not supported by substantial evidence and on June 21, 1934 (R. 56) entered its final degree permanently enjoining the enforcement of the Commission's order of November 8, 1933 as reaffirmed on April 18, 1934. The reduced rates have remained in effect under the protection of the final decree. An appeal from this final decree to this court was duly taken by the United States, the Interstate Commerce Commission and the railroad appellants.

The report of the Commission of April 18, 1934 on argu-

ment and reconsideration (R. 34) is a report of the full Commission and shows upon its face that it has been prepared with unusual care. The evidence is summarized and the findings of fact upon which the Commission's order of November 8, 1933, as affirmed by the full Commission on April 18, 1934, was based, are set out. The Commission pointed out that the coal rates throughtout the Indiana-Illinois territory had been found by it in other proceedings to be on a very low level due to intense carrier and commercial competition (R. 42) and that the witness for the Milwaukee frankly stated (R. 37) that the Milwaukee did not contend that the rates it proposed to reduce from its mines in Indiana were in excess of reasonable rates but further frankly conceded that as a matter of fact they were less than reasonable maximum rates as were all the rates from Illinois, Indiana and western Kentucky measured by any test evolved by the Commission in recent years.

The Commission explained (R. 35) that the mines in Illinois and western Kentucky had been grouped for rate making purposes and that the rates from the various groups to the territory in northern Illinois here involved bear differential relationships which are generally in conformity with the findings of the Commission in an earlier decision, *Illinois Coal Cases, 1920,* 62 I. C. C. 741 and 64 I. C. C. 751. The rates from the mines in western Kentucky, which have been thrown into a single group for rate making purposes, bear a relationship of 35 cents over the rates from the base, or southern Illinois group, in the Illinois field which was prescribed by the Commission in *Illinois Indiana Coal Cases,* 128 I. C. C. 265 and recently affirmed in *Western Kentucky Coal Bureau* v. *Illinois Central Railroad Company,* 172 I. C. C. 279. The Commission further pointed out that the mines in the Indiana field have likewise been grouped for rate making purposes and that the rates from the various groups to the territory in northern Illinois here

involved bear fixed differential relationships which have been voluntarily established by the carriers, including the Milwaukee. (R. 40) The rates from the various Indiana groups are closely related to the rates from the Illinois groups but in general the relationships of the rates from the Indiana groups to each other and to the rates from the Illinois groups have not been fixed by the Commission (R. 35). The locations of these groups are shown in a map Exhibit 5 (opposite page 148 of the printed record).

The Commission went into the history of the Indiana-Illinois rates reciting (R. 35) that prior to 1930 the coal rates from the Springfield group in Illinois and the Brazil-Clinton group in Indiana to the destinations here considered were maintained on a parity, with the rates from both groups 30 cents under the rates from the southern Illinois group. The rates from the other Indiana groups were on the established differentials over the northermost, or Brazil-Clinton group, which is the base group in Indiana. On August 20, 1930, by order of the Illinois Commerce Commission, the intrastate rates from the southern Illinois and Springfield groups, among others, were reduced 17 cents a ton. Subsequent to the reduction in the Illinois intrastate rates by the Illinois Commission the principal Illinois carriers, including the Milwaukee, filed a complaint with the Interstate Commerce Commission alleging that the reduced rates prescribed by the Illinois Commission were in violation of Section 13 of the Interstate Commerce Act in that they were unduly prejudicial to persons and localities in interstate commerce and unjustly discriminatory against interstate commerce. The Interstate Commerce Commission instituted an investigation and after full hearing found in its report in *Intrastate Rates on Bituminous Coal in Illinois,* 182 I. C. C. 537, that the rates from mines in Illinois to Rockford and Freeport should not be found unlawful under Section 13 of the act until and unless

the interstate rates from the Indiana groups to the same destinations were increased to a level more nearly commensurate with the general level of rates on coal in that territory (R. 36). In other words, although the Commission found that the rates from the Illinois mines to Rockford and Freeport prescribed by the Illinois Commerce Commission were unduly low, the rates from the Indiana mines, which the Milwaukee proposed to reduce in the instant proceeding, were likewise unduly low and there was not such a disparity in their relationships as would authorize the Commission to require an increase in the Illinois intrastate rates under the thirteenth section. The relationships between the interstate and intrastate rates which the Commission there found not unlawful were the relationships which the Milwaukee's proposed reductions would disrupt.

In addition to the highly competitive nature of the coal rate adjustment involved and its history, which alone show that reductions cannot be made in the rates from one group without precipitating reductions in the rates from the other groups, there was testimony of competent witnesses thoroughly familiar with the rate adjustment and its history, that if the reductions proposed by the Milwaukee should be permitted they would result in corresponding reductions in the rates from the other groups, with the net result of no advantage to the Milwaukee and a substantial loss in revenue to the carriers in general. An excerpt from the testimony of one of these witnesses to that effect was set out in the report of the full Commission (R. 41) and was relied upon by the Commission, as the report indicates. The District Court held in its memorandum opinion (R. 51) that this testimony was not entitled to much weight as evidence. This constitutes an express weighing of the testimony which this court has repeatedly held is not within the province of the court when determining whether findings

and orders of the Commission are supported by substantial evidence. The District Court further held (R. 51) that the finding of the Commission with respect to the effect of the proposed reduced rates on the general rate structure appeared to be based solely on such expressions as to the future effect of the proposed rates of the Milwaukee, erroneously ignoring the highly competitive nature of the rate adjustment and its history, which the Commission so carefully set out in its report.

The full Commission made findings in its report: (1) that the immediate effect of the proposed reductions of the Milwaukee (applying as they did from only some of the mines in the Brazil-Clinton and Linton-Sullivan groups (Exhibit 8, R. 149)), would be a splitting of those groups (R. 44); (2) that there was a likelihood of the extension of any reductions from the Milwaukee mines to the mines on other lines in the Brazil-Clinton and Linton-Sullivan groups (R. 44); (3) that reductions in the rates from the Brazil-Clinton and Linton-Sullivan groups would disrupt the differential relations existing as between those groups and the other Indiana groups with the probability of mines and carriers in such other groups seeking similar reductions (R. 44); (4) that the reductions which would follow if the reductions proposed by the Milwaukee were permitted could not be confined to the Indiana field but would probably lead to further reductions in the Illinois intrastate rates with like reductions in the rates from the western Kentucky group for the purpose of preserving the relationship between western Kentucky and Illinois prescribed by the Commission (R. 44); and (5) that the reductions which would probably result from the reductions made by the Milwaukee could not be confined to the destinations to which the Milwaukee rates applied but would jeopardize the rates to the surrounding territory, including the important Chicago district (R. 43).

Summarizing its findings the full Commission found (R. 44):

> "The reductions here proposed if permitted to become effective would result in a level of rates from the Indiana groups lower than that which we stated, in the Illinois case, to be well below the reasonable level of rates in this territory, and would probably lead to further reductions in the Illinois intrastate rates with like reductions in the rates from western Kentucky for the purpose of preserving the differential basis over the rates from the southern Illinois group prescribed by us, thus needlessly sacrificing the carriers' revenues and impairing their ability to render adequate and efficient railway transportation service."

At the conclusion of its report the full Commission found (R. 46):

> "We find that the proposed rates, if permitted to become effective, would lead to a disruption of the rate structure on coal in the Indiana and related areas, thus impairing the revenue of the carriers serving those areas and their ability to provide the adequate and efficient transportation service contemplated by section 15a of the act; that they would cause a disruption of the individual groups from which the rates are proposed; and that they would cause a disruption of the long standing rate relation existing for competitive purposes, between the several Indiana groups.
>
> We find that the proposed rates would be unreasonable and in violation of sections 1(5) and 15a(2) of the act."

As indicating the probable effect of the proposals on the revenues of the carriers in general the Commission pointed out that, based on a coal tonnage to Rockford alone from the Illinois, Indiana and western Kentucky fields, as shown in an exhibit of record (Exhibit 43, R. 217) a 17 cent reduction would result in an annual revenue loss to the carriers approximating $48,600.00 and that should the rates to Chicago be reduced to the level of the rates to Rockford the net annual revenue loss to the carriers, based on the

tonnage of recent years referred to in the Illinois case, would exceed $1,400,000.00.

Upon the findings to which we have referred the Commission felt constrained, in view of the minimum rate powers conferred upon it under Section 1(5) and Section 15(1)(7) of the Act and the duty imposed under Section 15a(2), to prevent the disruption of an already abnormally low rate structure and the bringing about of a generally lower level of rates which would needlessly sacrifice the carriers' revenues and impair their ability to render adequate service, and ordered the cancellation of the Milwaukee's schedules. It will be shown that such an order was within the authority conferred upon the Commission under the Commerce Act and constituted a valid exercise of that authority in this case. The evidence in support of the findings of the Commission will be discussed in detail in the following sections of this brief in which it will be shown that the full Commission correctly stated (R. 42):

> "In fact, it would be difficult to conceive of a proposal more likely to precipitate unwarranted changes in a keenly competitive rate structure than that here proposed."

Upon this same record the District Court found that the Commission's findings and order were not supported by substantial evidence. Such a conclusion was reached only by the ignoring of substantial evidence on the part of the District Court and by expressly giving less weight to other evidence than was assigned to it by the Commission. This court has characterized the Commission as an expert body informed by experience and has repeatedly held its orders are not to be set aside if supported by substantial evidence, and that it is not within the province of the court to weigh the evidence. The failure of the District Court to observe this cardinal rule and the substitution of its judgment for that of the Commission can alone account for its opinion in this case and its decree permanently enjoining enforce-

ment of the Commission's order. To sustain the District Court would be to permit rate relationships and ultimately the level of the rates on one of the most important commodities subject to transportation, both from a tonnage and revenue standpoint, to be determined by the carriers under the protection of the court rather than by the Commission pursuant to the duty laid upon it to preserve the revenues of the carriers and insure an adequate national transportation system.

SPECIFICATION OF ERRORS TO BE URGED.

The District Court erred:

1. In deciding that the order of the Interstate Commerce Commission of November 8, 1933, as affirmed April 18, 1934, is not supported by substantial evidence.

2. In deciding that there was no substantial evidence in the record to justify a finding by the Interstate Commerce Commission that the rates proposed were unlawful and in violation of the Interstate Commerce Act.

3. In holding and deciding that there is nothing in Section 15a(2) of the Interstate Commerce Act, as amended by the Emergency Railroad Transportation Act, 1933, "authorizing the Commission to establish rates above a reasonable minimum for one railroad merely to enable another railroad in the group not so well situated, to earn a fair return, even if the Act of 1920 did so provide."

4. In exceeding its proper judicial authority and function in entering upon a determination, upon conflicting evidence, of the fact questions presented before the Commission thus usurping the administrative functions of the Commission and in substituting its judgment for that of the Commission.

5. In deciding that the order of the Commission was unfair and discriminated against the plaintiff below, the Chicago, Milwaukee, St. Paul & Pacific Railroad Company.

SUMMARY OF ARGUMENT.

I.

The proposed reduced rates ordered canceled by the Commission in this proceeding were found by the Commission to be unlawful in that they were in violation of Section 1(5) and Section 15a(2) of the Interstate Commerce Act. Section 1(5) requires all rates to be just and reasonable. It was recognized prior to the passage of the Transportation Act of 1920 that a rate could be unreasonable because it was too low as well as because it was too high. *Interstate Commerce Commission* v. *C. N. O. & T. P. Railway Company,* 167 U. S. 479, 511, but the Commission did not have the power to condemn rates because unreasonably low in violation of Section 1(5) prior to the passage of that act. *Skinner & Eddy Corporation* v. *United States,* 249 U. S. 557, 565. Since the amendment of Section 15(1) by the Transportation Act of 1920, giving the Commission the power to prescribe minimum rates, the Commission has the power to require the cancellation of rates unreasonably low in violation of Section 1(5). Section 15a(2) as enacted in the Transportation Act of 1920 imposed upon the Commission the duty to conserve the revenues of the carriers and to fix rates and take other important steps to maintain an adequate railway service for the people of the United States. *Wisconsin Railroad Commission* v. *C. B. & Q. Ry. Co.* 257 U. S. 563. The amendment of Section 15a(2) by the Emergency Railroad Transportation Act of 1933 in nowise diminished the duty of the Commission to conserve the carriers' revenues but on the contrary by its express terms emphasized the carriers' need of adequate revenues. *Florida* v. *United States,* 292 U. S. 1. Proposed reduced rates which would precipitate a general reduction in a rate structure not

unreasonably high and result in the unnecessary dissipation of the revenues of the carriers in general and impair their ability to render adequate and efficient transportation service are in violation of Section 15a(2) of the Act and of Section 1(5) of the Act construed in the light of Section 15a(2) and Section 15(1), and can be prohibited by the Commission from going into effect under the powers of investigation and suspension conferred by Section 15(7) of the Act.

The annual reports of the Interstate Commerce Commission, prior to the passage of the Transportation Act of 1920, show that it sought the minimum rate power for the purpose of enabling it to deal with such a situation as was presented to it by the reductions in rates proposed by the Milwaukee in this case.

This court has upheld the minimum rate power of the Commission over intrastate rates under Section 13(3) (4) of the Act conferred by the Transportation Act of 1920 where exercised on account of revenue considerations. *Wisconsin Railroad Commission* v. *C. B. & Q. Ry. Co.* 257 U. S. 563; *United States* v. *Louisiana*, 290 U. S. 70; *Florida* v. *United States*, 292 U. S. 1. It should no less clearly be upheld with respect to the interstate rates which are of far more importance to the maintenance of an adequate national transportation system.

The minimum rate power over interstate rates has been upheld by lower federal courts in *Jefferson Island Salt Mining Company* v. *United States*, 6 Fed. (2d) 315 and *Anchor Coal Company* v. *United States*, 25 Fed. (2d) 462.

II.

The principal ground upon which the District Court enjoined enforcement of the Commission's order was that the findings and order were not supported by substantial evidence. This conclusion of the District Court was in error. Both the ultimate finding of the Commission that the proposed reduced rates were unlawful in violation of Section 1(5) and Section 15a(2) of the Act and the supporting findings of fact made in the Commission's reports are fully supported by the evidence. The Commission's findings that the proposed rates would lead to a disruption of the general rate structure on coal in Indiana and related areas, which the Milwaukee conceded and the Commission found was not unreasonably high, and would bring about a generally lower level of rates in that territory, was supported by the history of the rate adjustment which demonstrated its highly competitive nature and the impossibility of changing certain rates in the adjustment without affecting other rates and relationships. The relationship between the rates from the Indiana groups and the Illinois groups which the Milwaukee's proposal would disrupt was the relationship which the Commission had previously found not unlawful in a prior proceeding, *Intrastate Rates on Bituminous Coal in Illinois,* 182 I. C. C. 537. Aside from the history of the adjustment there was specific testimony of witnesses familiar with the rate adjustment that the Milwaukee's proposed rates would disrupt the existing general rate structure and bring about a general reduction of rates in this territory already unduly low.

The Commission's subordinate findings of fact that the Milwaukee's proposals would split the Brazil-Clinton and Linton-Sullivan origin groups, bring about like reductions in rates in those groups and ultimately spread to the other

competing groups in Indiana, Illinois and western Kentucky, were fully supported by the evidence. The Commission's further finding that the reductions which would be precipitated by the Milwaukee's reduced rates could not be confined to the destinations to which the Milwaukee's rates applied but would spread to other destinations in the same territory, including the important Chicago district, was likewise fully supported by the evidence.

The Commission's finding that the reductions which would be precipitated by the proposed reduced rates of the Milwaukee would result in an unnecessary and serious dissipation of the carriers' revenues and impair their ability to render adequate transportation service was fully supported by the evidence.

The Commission's finding that the rate relationships which the Milwaukee's proposed reduced rates would disrupt had not brought about a decrease in the movement of coal from the Indiana groups via the Milwaukee to the destination territory involved, was fully supported by the exhibit of record referred to in the Commission's report, which constituted the only specific evidence of the movement of coal under the rates involved, and was further supported by the oral testimony of the witnesses.

III.

It is the settled rule of law that it is not within the province of the court to weigh the testimony or substitute its judgment for that of the Commission. *Manufacturers Railway Company* v. *United States,* 246 U. S. 457, 482; *New England Divisions Case,* 261 U. S. 184; *Western Paper Makers Chemical Company* v. *United States,* 271 U. S. 268; *Florida* v. *United States,* 292 U. S. 1. The decision of the specially-constituted District Court can be explained only

on the assumption that the court did weigh the testimony and substitute its judgment for that of the Commission. The District Court expressly assigned less weight to the opinion testimony of a competent witness, which was quoted from in the report of the Commission, than did the Commission in arriving at its conclusions. In addition to assigning less weight to certain testimony than did the Commission the District Court ignored other important evidence expressly relied upon by the Commission, such as the history and highly competitive nature of the rate adjustment, the fact it was conceded to be unduly low and was so found by the Commission, and movements under the then-existing rates which showed that the Milwaukee was competing freely under the rate relationships it was endeavoring to change to its further advantage. The general effect of sustaining the decision of the District Court would be to permit rate relationships and ultimately the level of rates to be determined by the carriers under the protection of the court rather than by the Commission as the law provides.

IV.

The District Court's finding that the Commission's order was unfair and discriminated against the Milwaukee was in error. The Commission's order did not discriminate against the Milwaukee by prohibiting it from competing for the traffic involved. The evidence showed that the Milwaukee was competing freely under the then-existing rates. Nor did the order of the Commission requiring the cancellation of the proposed reduced rates constitute an undue interference with the Milwaukee's managerial discretion with respect to the publication of competitive rates. The right of a carrier to initiate rates is not absolute but is subject to the Commission's regulation and control. *United States* v. *Illinois Central Railroad Company*, 263 U. S. 515.

The case cited by the District Court, *Texas & Pacific Railway Company* v. *United States*, 289 U. S. 627, did not involve the minimum rate power but was decided under Section 3 of the Act. Whether a rate is compensatory for the service rendered is not the only test of minimum reasonableness. *Jefferson Island Salt Mining Company* v. *United States*, 6 Fed. (2) 315; *Mississippi Valley Barge Line Company* v. *United States*, 292 U. S. 282.

The Commission's order was not arbitrary and did not discriminate against the Milwaukee in that it improperly disregarded the distances from the mines on the Milwaukee alone or required the Milwaukee to cancel rates which were lower, distance considered, than rates from mines in Illinois in which it had been compelled to join by the Illinois Commerce Commission. The rates which the Milwaukee proposed to reduce had long been group rates. The Commission properly so treated them and took into consideration the average distances from all points in the origin groups. The Commission correctly held that the consideration of point to point distances alone in a group rate adjustment would tend to destroy all groupings and could not be adopted. The Milwaukee's contention that the Commission's order required it to cancel rates relatively higher than rates from mines in Illinois in which the Illinois Commerce Commission required it to join was not disregarded by the Commission but was specifically referred by the Commission, which pointed out that if distances from only the mines on individual lines were to be considered, there were comparisons unfavorable to the Milwaukee's proposed rates as well as the favorable comparisons to which the Milwaukee directed attention. Furthermore, the record in this case demonstrated, and the witness for the Indiana operators testified, that the rates on coal in this territory had not been made on distance alone and could not be so made. Competition is one of the important elements which

cannot be ignored. This court itself has recognized that distance is only one element to be considered in the fixing of rates. *Interstate Commerce Commission* v. *Union Pacific Railroad Company*, 222 U. S. 541, 551; *Louisville & Nashville Railroad Company* v. *United States*, 238 U. S. 111. The Commission's report shows on its face that it has given every consideration to the element of distance to which it is entitled in this highly competitive group rate adjustment.

V.

The Commission's ultimate findings of fact that the proposed rates were unlawful in violation of Section 1(5) and Section 15a(2) of the Act are fully supported by the subordinate findings of fact in the Commission's reports, which are in turn fully supported by the evidence. The order of the Commission requiring the cancellation of the proposed rates constituted a valid exercise of its power in this proceeding. The decree of the court below restraining the enforcement of the Commission's order should be reversed.

ARGUMENT.

I.

THE INTERSTATE COMMERCE COMMISSION, IN HEARING AND DECIDING THE ISSUES RAISED IN THE PROCEEDINGS BEFORE IT, AND ENTERING THE ORDERS ENJOINED BY THE DISTRICT COURT, PROCEEDED PURSUANT TO AUTHORITY VESTED IN IT BY CONGRESS AND IN DISCHARGE OF THE ADMINISTRATIVE DUTY VALIDITY IMPOSED UPON IT TO PREVENT THE UNNECESSARY DISSIPATION OF THE CARRIERS' REVENUES BY THE ESTABLISHMENT OF UNDULY LOW RATES.

1. THE COMMISSION'S FINDINGS OF FACT SHOW THAT THE PROPOSED REDUCED RATES WERE ORDERED CANCELLED ON THE GROUND THAT THEY WERE LESS THAN REASONABLE MINIMUM RATES.

The Commission's ultimate finding that the proposed reduced rates of the Milwaukee were unlawful is thus stated in the report of the full Commission of April 18, 1934, 200 I. C. C. 609, 622 (R. 47):

> "We find that the proposed rates would be unreasonable and in violation of sections 1(5) and 15a(2) of the act."

Section 1(5) of the Commerce Act (49 U. S. C. 1(5)) reproduced in the appendix of this brief, page 79, requires all charges for services rendered by the carriers subject to the Act in the transportation of passengers or property to be just and reasonable and declares that every unjust and unreasonable charge is unlawful and prohibited. Section 15a(2) of the Act (49 U. S. C. 15a(2)), reproduced in the appendix, page 81, provides:

> "In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on

> the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service."

The Commission is empowered in Section 15(1) of the Act (49 U. S. C. 15(1)), reproduced in the appendix, page 79, to prescribe both maximum and minimum rates.

The proceedings before the Commission here under review were under paragraph 7 of Section 15 of the Act (49 U. S. C. 15(7), reproduced in the appendix, page 80, in which the Commission is authorized to suspend the operation of any schedule stating a new individual or joint rate and to enter upon a hearing "concerning the lawfulness of such rate" and after such hearing to make "such order with reference thereto as would be proper in a proceeding initiated after it had become effective." If the Commission finds, after a full hearing, that a proposed new rate suspended by it under paragraph (7) of Section 15 of the Act is unlawful, it is clearly empowered to condemn that rate and require its cancellation. In the proceedings here under review the Commission has found that the proposed reduced rates of the Milwaukee were unlawful in that they were in violation of Sections 1(5) and 15a(2) of the Act and ordered their cancellation.

The Commission's findings in its reports show clearly that the proposed reduced rates were found unlawful and ordered canceled on the grounds that they were unreasonably low in violation of Section 1(5) of the Act, and would precipitate general reductions in the rates of other carriers resulting in the impairment of their revenues and their ability to provide adequate and efficient railway transportation service in violation of Section 15a(2) of the Act. Among such findings are the findings on page 621 of the

report of the full Commission of April 18, 1934 (R. 46), reading as follows:

> "We find that the proposed rates if permitted to become effective would lead to a disruption of the rate structure on coal in the Indiana and related areas, thus impairing the revenue of the carriers serving those areas and their ability to provide the adequate and efficient transportation service contemplated by section 15a of the act; * * *"

and the finding on page 619 of the report of the full Commission of April 18, 1934 (R. 44), reading:

> "The reductions here proposed, if permitted to become effective, would result in a level of rates from the Indiana groups lower than that which we stated, in the *Illinois Case,* to be well below the reasonable level of rates in this territory, and would probably lead to further reductions in the Illinois intrastate rates with like reductions in the rates from western Kentucky for the purpose of preserving the differential basis over the rates from the southern Illinois group prescribed by us, thus needlessly sacrificing the carriers' revenues and impairing their ability to render adequate and efficient railway transportation service."

There was no contention that the proposed rates of the Milwaukee were so low that they would not yield sufficient revenue to compensate it for its services in rendering transportation thereunder. No evidence on this point was presented before the Commission and no finding with respect to the compensatory character of the proposed rates was made. On the other hand, it was conceded by the Milwaukee (R. 74, 83, 90) and found by the Commission (R. 37, 42) that the then-existing rates were less than maximum reasonable rates, and, consequently, that the proposed reduced rates, 17 cents less than the then existing rates to the principal destinations, were well under maximum reasonable rates. One of the principal issues of law, therefore, is whether proposed reduced rates which would precipitate a general reduction in a rate structure not unrea-

sonably high and result in the unnecessary dissipation of the carriers' revenues and the impairment of their ability to render adequate and efficient transportation service are unlawful and can be prohibited by the Commission.

2. THE HISTORY OF THE MINIMUM RATE POWER SHOWS THAT IT WAS EXPRESSLY SOUGHT BY THE COMMISSION FOR THE PRIMARY PURPOSE OF DEALING WITH SITUATIONS SUCH AS WAS PRESENTED IN THIS CASE.

The Commission did not have the power to condemn rates because unreasonably low prior to the passage of the Transportation Act of 1920 (41 Stat. L. 456), *Skinner & Eddy Corporation* v. *United States,* 249 U. S. 557, 565, although long before that it had been recognized that a rate might be unreasonable because it was too low as well as because it was too high. *Interstate Commerce Commission* v. *C. N. O. & T. P. Railway Company,* 167 U. S. 479, 511. The Commission soon found in its administration of the Commerce Act that the lack of power to deal with rates because unreasonably low was a serious handicap, especially in coping with that particular form of discrimination brought about by an individual carrier's unwise and unwarranted upsetting of a reasonable rate adjustment for the purpose of furthering its own ends at the expense of others, and commented on this lack of power in its annual reports. Second Annual Report of the Interstate Commerce Commission, 1888, p. 19; Fourth Annual Report of the Interstate Commerce Commission, 1890, pp. 21-22; Seventh Annual Report of the Interstate Commerce Commission, 1893, pp. 38, 39, 78; Eighth Annual Report of the Interstate Commerce Commission, 1894 p. 78; Eleventh Annual Report of the Interstate Commerce Commission, 1897, p. 37; Thirty-Third Annual Report of the Interstate Commerce Commission, 1919, p. 4. In the Annual Report for 1893, the Commission recommended that it be granted

the minimum rate power and among the principal reasons therefor suggested (a) the prevention of a carrier from being deprived of revenue it ought to have, (b) the prevention of discrimination, and (c) the prevention of an unfair distribution of the burden of the cost of transportation. In the Annual Report for 1897, page 24, the Commission commented upon a case then recently before it, *Eau Claire Board of Trade* v. *C. M. & St. P. Ry. Co.*, 5 I. C. C. 264. The Commission had required the reduction of rates on lumber from Eau Claire, Wisconsin, to certain common markets on the ground that they were too high compared with the rates to those markets from Winona and La Crosse, Wisconsin. As soon as these reductions were made by the Milwaukee, which served Winona and La Crosse as well as Eau Claire, other lines which served Winona and La Crosse but did not serve Eau Claire made corresponding reductions in their rates, which restored the old prejudicial relationship. The Commission suggested that it be given the power to deal with such rates and prevent such unwarranted reductions.

Finally, in the year 1919, immediately before the termination of federal control and the return of the carriers to their private owners under conditions which made it obvious that far reaching changes in the theories and practices of railroad regulation were necessary, the Commission renewed its request for power to deal with rates that were unreasonably low. The Commission's Annual Report for the year 1919 contains, beginning on page 1, a statement made by Commissioner Clark of the prevailing views of the members of the Commission with respect to legislation and the program to which the Commission as a body gave its support. Among the suggestions for needed legislation the following appears on page 4 of the report:

> "The regulating tribunal should have authority to prescribe not only the maximum which the carrier may charge, but also the minimum. This power would re-

> strict an individual carrier from furthering its own ends at the expense of others by unwise and unwarranted upsetting of reasonable rate adjustments. If the rates and charges are by regulation confined within the reasonably narrow limits between the maximum and the minimum reasonable charges, no public interest can be injured by the carriers all maintaining charges within those limits."

It thus appears that the minimum rate power was expressly requested by the Commission for the purpose of dealing with such a situation as was presented to it in the proposed reductions by the Milwaukee of its rates on coal from its mines in the northern Indiana groups to Rockford and Freeport and the other destinations here involved.

Among the additional powers conferred upon the Commission by the Transportation Act of 1920 was the power to prescribe minimum rates (41 Stat. L. 456, 484-485). This was done by amending Section 15(1) of the Act. The Transportation Act of 1920 also added a new section to the Act, Section 15a (41 Stat. L. 488), which provided in paragraph 2 that the Commission in the exercise of its power to prescribe just and reasonable rates should initiate, modify, establish or adjust such rates so that the carriers should earn a fair return upon the aggregate value of their property held for and used in the transportation service. The duties imposed upon the Commission by this amendment were clearly impossible of fulfilment without the conferring of the power to prevent the establishment of unduly low rates.

3. THIS COURT HAS REPEATEDLY UPHELD THE COMMISSION'S MINIMUM RATE POWER OVER INTRASTATE RATES. IT SHOULD NO LESS CLEARLY BE UPHELD WITH RESPECT TO THE MORE IMPORTANT INTERSTATE RATES.

In addition to conferring upon the Commission the power to prescribe minimum interstate rates, Congress, in Section 416 of the Transportation Act of 1920 (41 Stat. L. 484), con-

ferred upon the Commission the power to prescribe minimum intrastate rates upon finding after full hearing that the intrastate rates caused undue prejudice to shippers or localities in interstate commerce or discrimination against interstate commerce. (Section 13(3)(4) of the Interstate Commerce Act) (49 U. S. C. 13(3)(4)). The Commission's power over intrastate rates under Section 13 has been hotly contested and many cases involving orders of the Commission prescribing minimum intrastate rates have reached this court. One of the earliest cases under the thirteenth section was *Wisconsin Railroad Commission* v. *C. B. & Q. Railroad Company*, 257 U. S. 563, involving intrastate passenger fares in Wisconsin. The radical departure of Congress from its prior legislative policies made in the Transportation Act of 1920 was thus summed up in the opinion, page 585:

> "It is manifest from this very condensed recital that the act made a new departure. Theretofore the control which Congress through the Interstate Commerce Commission exercised was primarily for the purpose of preventing injustice by unreasonable or discriminatory rates against persons and localities, and the only provisions of the law that inured to the benefit of the carriers were the requirement that the rates should be reasonable in the sense of furnishing an adequate compensation for the particular service rendered and the abolition of rebates. The new measure imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States. This is expressly declared in Sec. 15a to be one of the purposes of the bill."

The Commission's order was upheld by the court, page 589 of the opinion, on the single ground that the intrastate passenger rates prescribed by the Wisconsin Commission on a lower basis than the interstate rates would not contribute their fair share of revenue to the maintenance of the general transportation system and therefore discriminated

against interstate commerce, which discrimination the Commission had the power to remove. The Commission's minimum rate power over intrastate rates has been sustained by this court in numerous other cases, among which are *Georgia Public Service Commission* v. *United States,* 283 U. S. 765, *Alabama* v. *United States,* 283 U. S. 776, *United States* v. *Louisiana,* 290 U. S. 70, *Florida* v. *United States,* 292 U. S. 1. In the later case it was contended that the amendment of Section 15a(2) of the Commerce Act by the Emergency Transportation Act of 1933, (48 Stat. L. 220) had taken from the Commission the power to prescribe intrastate rates for the purpose of preventing revenue discrimination against interstate commerce. Section 15a(2) has been quoted. The court held that the substitution of the directions contained therein for the fair return provisions of Section 15a(2) as enacted in the Transportation Act of 1920, in nowise diminished the Commission's minimum rate power over intrastate rates, stating, page 606:

> "Neither the elimination of the group method of rate making, nor the substituted rule, suggests an intention to impair the Commission's authority over intrastate rates for the appropriate protection of interstate commerce. On the contrary, the substituted rule of rate making by its express terms emphasizes the carriers' need of adequate revenues. The Congress had provided authority to meet that need where inadequate intrastate rates caused unjust discrimination against interstate commerce. The Commission had exercised that authority. The Commission had not proposed the diminution of that authority. The new Act discloses no intention to weaken national control for essential national purposes over the railway system of the country. It was rather designed to aid that control in the light of the depressed economic condition of the railways. We conclude that the new rule of rate making left the power of the Commission under section 13(4) intact."

While these decisions deal with the intrastate rates, it is inconceivable that Congress intended to give the Commis-

sion less power over interstate rates which are of far greater importance in the maintenance of a general national transportation system.

The recent decision of this court in *Mississippi Valley Barge Line Company* v. *United States*, 292 U. S. 282, involved a minimum rate order of the Interstate Commerce Commission dealing with interstate rates and made in an investigation and suspension proceeding. The Commission's order was sustained. The minimum rate power was not challenged in that case but this court said, page 287 of the opinion:

> "The rates were not approved as the respondents had submitted them. For the 80,000 pound minimum they were found to be too low. Not till there had been an increase of four cents per 100 pounds did the schedule win approval. There was a sedulous endeavor to guard against a rate war that would end in mere oppression."

Although no other case directly involving the minimum rate power as applied to interstate rates has been before this court, there are expressions in several decisions which we believe clearly support our position that the Commission's power to prevent the unnecessary dissipation of the carriers' revenues by prohibiting unduly low interstate rates should be no less certainly upheld than its power to prevent unduly low intrastate rates.

In *United States* v. *Illinois Central Railroad Company*, 263 U. S. 515, decided in 1924, this court upheld an order of the Commission requiring the removal of discrimination in interstate rates brought about by the maintenance of certain joint through rates on lumber from points on a short connecting line higher than the blanket rates from points on trunk lines within the same general territory. One of the grounds urged by the defendant railroad in support of its contention that the discrimination was not undue was that the lower rates from points on its own line were

for the purpose of developing or securing competitive traffic. The court said, page 525 of the opinion:

> "These were factors to be considered by the Commission; but they did not preclude a finding that the discrimination practiced is unjust. Such was the law even before Transportation Act 1920. *Texas & Pacific Ry. Co.* v. *Interstate Commerce Commission,* 162 U. S. 197, 218, 220; *Interstate Commerce Commission* v. *Alabama Midland Ry.,* 168 U. S. 144, 167, 175. In view of the policy and provisions of that statute, the Commission may properly have concluded that the carrier's desire to originate traffic on its own lines, or to take traffic from a competitor should not be given as much weight in determining the justness of a discrimination against a locality as theretofore. For now, the interests of the individual carrier must yield in many respects to the public need, *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co.,* 257 U. S. 563; *New England Divisions Case,* 261 U. S. 184; and the newly conferred power to grant relief against rates unreasonably low may afford protection against injurious rate-policies of a competitor, which were theretofore uncontrollable."

In *Texas & Pacific Ry. Co.* v. *Gulf, Colorado & Santa Fe Ry. Co.,* 270 U. S. 266, which dealt with the granting of a certificate of public convenience and necessity for an extension of a line of railroad which would invade an industrial district already served by other railroads protesting against the extension, the court said, referring to the Transportation Act of 1920, page 277:

> "By that measure, Congress undertook to develop and maintain, for the people of the United States, an adequate railway system. It recognized that preservation of the earning capacity, and conservation of the financial resources, of individual carriers, is a matter of national concern; that the property employed must be permitted to earn a reasonable return; that the building of unnecessary lines involves a waste of resources, and that the burden of this waste may fall upon the public; that competition between carriers may result in harm to the public, as well as in benefit;

> and that, when a railroad inflicts injury upon its rival, it may be the public which ultimately bears the loss. See *Railroad Commission* v. *C. B. & Q. R. R. Co.*, 257 U. S. 563; *The New England Divisions Case*, 261 U. S. 184; *The Chicago Junction Case*, 264 U. S. 258; *Railroad Commission* v. *Southern Pacific Co.*, 264 U. S. 331. The Act sought, among other things to avert such losses."

This language is equally applicable to the instant case.

4. THE MINIMUM RATE POWER OVER INTERSTATE RATE HAS BEEN UPHELD BY LOWER COURTS.

The minimum rate power over interstate rates has been passed upon by lower courts in two prior cases, *Jefferson Island Salt Mining Co.* v. *United States*, 6 F. (2d) 315, and *Anchor Coal Co.* v. *U. S.* 25 F. (2d) 462. In the former case the District Court for the Northern District of Ohio upheld an order of the Commission prescribing minimum rates on salt from competing mines to Chicago for the purpose of bringing to an end an unnecessary and destructive rate war which was dissipating the carriers' revenues and causing unjust discrimination among shippers. The opinion is carefully written and reviews many of the decisions of this court to which we have referred. In sustaining the order of the Commission, the court said with respect to the exercise of the minimum rate power, page 318:

> "In the present case, the evidence is ample that ruinous rate wars can only be avoided and a reasonable relationship between rates collected and service rendered can only be maintained by the power exercised by the Commission. If plaintiffs' contentions were sustained, it would cut the heart out of the 1920 amendments to the Interstate Commerce Act. The new objects and purposes to be accomplished, as summarized above, would be nullified. New section 15a would be read out of the act."

On page 319 the court said:

> "We agree with the Commission that no different

tests or standards are prescribed for the determination of a just and reasonable minimum rate than for a just and reasonable maximum rate, and that the minimum rate-making power would be ineffectual, if Congress intended that it should be used only in cases where the rate assailed had been proved with mathematical exactness to be less than the cost of service. Such a test is impracticable of application to specific rates on a single commodity. * * * It was not necessary that the Commission should first have found that the Detroit to Chicago rate, or the Louisiana to Chicago rate, was noncompensatory, in order that a higher minimum rate might be prescribed, if in fact, as the Commission was justified in finding, proper rate relationships between different carriers and localities could not otherwise be established, or ruinous rate wars, threatening the ability of the Commission to fix rates for the carriers as a whole or in groups, which would permit the earnings prescribed in Section 15a, could not otherwise be avoided."

The District Court undertook in its opinion in the instant case (R. 53) to distinguish *Jefferson Island Salt Mining Company* v. *United States, supra,* on the ground that that case was decided under Section 15a(2) of the act as it stood after the amendment of 1920 which was very considerably changed by the amendment of 1933. The effect of the amendment made by the Emergency Transportation Act of 1933 on the Commission's minimum rate powers has already been determined by this court in *Florida* v. *United States,* 292 U. S. 1, previously discussed, where it was held that the Commission's minimum rate powers over intrastate rates had been in nowise curtailed. There can be no distinction in principle between the effect of the amendment on the Commission's power over intrastate rates and its power over interstate rates. The lower court was clearly in error in distinguishing *Jefferson Island Salt Mining Company* v. *United States, supra,* from the instant proceeding.

In the other District Court case, *Anchor Coal Co.* v.

United States, 25 F. (2d) 462, the District Court for the Southern District of West Virginia held a minimum rate order of the Commission dealing with interstate rates void on other grounds, but, page 471 of the opinion, did not question the Commission's general power to prescribe minimum rates to prevent ruinous rate wars and to guarantee reasonable earnings, not only to the carier affected, but also to a competing carrier which may labor under a higher cost of doing business. An appeal from the decision of the District Court was taken to this court, but the case having become moot in the meantime due to changes in rates, the decree below was reversed and the case remanded with directions to dismiss the bill. *United States* v. *Anchor Coal Company*, 279 U. S. 812.

It is clear from the circumstances under which the minimum rate power was conferred upon the Commission in the Transportation Act of 1920, and the decisions construing the act, that the power was granted at the Commission's request for the primary purpose of restraining an individual carrier from furthering its own ends at the expense of other carriers by the unwise and unwarranted upsetting of a reasonable rate adjustment, and that the Commission is under the duty of preventing the consequent unnecessary dissipation of the carriers' revenues and the impairment of their ability to provide an adequate national transportation system. The order of the Commission here under review prohibiting the unwarranted reductions in rates proposed by the Milwaukee constitutes a valid exercise of the minimum rate power clearly conferred upon it in the Act as amended, and the Commission would have been remiss in its duty had it not undertaken to prevent the consequences which we shall show the record in this case clearly indicates would inevitably follow if the reduced rates of the Milwaukee, which have taken effect under the injunction of the lower court, were permitted to remain permanently in effect.

II.

THERE WAS SUBSTANTIAL EVIDENCE TO SUPPORT THE FINDINGS AND ORDER OF THE COMMISSION.

1. THE COMMISSION'S FINDINGS THAT THE PROPOSED REDUCTIONS IN RATES WOULD DISRUPT THE EXISTING GENERAL RATE STRUCTURE AND RESULT IN A GENERAL REDUCTION IN RATES CONCEDED TO BE ALREADY ABNORMALLY LOW ARE FULLY SUPPORTED BY THE EVIDENCE.

One of the principal grounds upon which the District Court enjoined the Commission's order was that the Commission's findings of fact were not supported by the evidence. It is too well settled to require discussion that the Commission's findings are conclusive if supported by substantial evidence. When the evidence is material and conflicting it is not the province of the court to pass upon its weight. *Illinois Central Railroad Company* v. *Interstate Commerce Commision,* 206 U. S. 441, 454, *Western Paper Makers Chemical Company* v. *United States,* 271 U. S. 268, 271, *Claiborne Annapolis Ferry Co.* v. *United States,* 285 U. S. 382, 392. We do not believe, however, that it is necessary to apply any such strict rule to the Commission's findings of fact in the case under review. The findings of fact are supported by the overwhelming weight of the evidence and not merely by the substantial evidence the law requires.

The general findings of the Commission as to the effect on the rate structure of the reductions in rates proposed by the Milwaukee have been indicated in the foregoing section of this brief dealing with the Commission's power to prevent the unnecessary sacrifice of revenue. The care and patience with which the Commission has reviewed the evidence and stated its findings of fact are plain.

(a) *The History and Highly Competitive Nature of the Rate Structure Involved.*

It is necessary to consider briefly the general rate structure itself and something of its history in order to understand the complete significance of the Milwaukee's reduced rates and the effect they would have on the general rate structure if permitted to remain in effect, before taking up the specific findings of the Commission bearing on the point under discussion.

The rates from mines on the Milwaukee in the Brazil-Clinton and Linton-Sullivan groups to Rockford, Freeport and intermediate points which the Milwaukee proposed to reduce are parts of the general adjustment of rates on coal from the Indiana, Illinois and western Kentucky fields to Indiana, Illinois and Wisconsin, and particularly to points in northern Illinois, including the important Chicago district. This general rate adjustment is one of the most highly competitive adjustments in the country. The intense competition among the carriers and the coal operators and the importance of the adjustment to consumers have given rise to repeated litigation with the result that the Commission has passed upon practically all of the important aspects of the adjustment in prior cases and is thoroughly familiar with the general situation. Several of the more important prior cases dealing with the adjustment are mentioned in the Commission's reports in this case and will be referred to in this section of the brief. This court has frequently characterized the Commission as an expert body informed by experience. This characterization is peculiarly apt with respect to matters pertaining to the coal rate adjustment here involved.

In a recent thirteenth section case, *Intrastate Rates on Bituminous Coal Within Ohio*, 192 I. C. C. 413, decided May 2, 1933, an effort was made to justify the low intrastate

rates in Ohio by comparisons with the rates in the Indiana-Illinois territory. The Commission's comments on the Indiana-Illinois adjustment are set out on page 617 of the report of the full Commission of April 18, 1934, (R. 42) and read in part as follows:

> "* * * It is generally conceded that the basis of rates on coal in the Illinois territory is the lowest in the country. This has greatly been brought about by a competitive condition differing from that in the Ohio territory, although some testimony was introduced to indicate that the actual operating conditions in Illinois are not more favorable than in Ohio. Chicago, in the Illinois territory, is the greatest coal market in this country, and * * * consumes annually 30,000,000 to 35,000,000 tons of coal. It was * * * stated that the rate level to Chicago is the result of keen competition between producers of eastern coal, moved both by rail and water-and-rail, and producers of Illinois and Indiana coals. Like competition also exists between carriers that have their own rails extending from particular groups in Illinois and Indiana to Chicago and whose principal interest is to move coal from their own mines. The rates to Chicago have had a depressing effect upon other rates on bituminous coal in this territory and have resulted in the establishment many years ago of a competitive basis of rates that is on a very low level."

It is submitted that the Commission was in a far better position to appreciate the effect of reductions in rates on the general adjustment than was the District Court.

The relationships of the rates from the various fields and from the various groups within each field are portrayed in many exhibits of record, of which Exhibit 40 (R. 215) is typical, and have been carefully set out in the Commission's reports. The mines in all of the fields have been grouped for rate making purposes for many years. The principal groups and their locations are shown on a map introduced as Exhibit 5 (Opposite page 148 of the printed record). The origin groupings and rate relationships in the Indiana

field are thus described on page 615 of the report of the full Commission (R. 40):

> "The coal-producing area in Indiana, consisting of several groups, extends southward from the Brazil-Clinton group (the so-called base group) to the Ohio River. The rates from the more-distant southern groups are based differentially over those from the Brazil-Clinton group. To the destinations here considered the rates from the Linton-Sullivan, Princeton, and Boonville groups are 5, 12, and 15 cents, respectively, higher than the rates from the Brazil-Clinton group. Stated otherwise, rates from the Linton-Sullivan group are 5 cents higher than rates from the Brazil-Clinton group; rates from the Princeton group are 7 cents higher than rates from the Linton-Sullivan group and rates from the Boonville group are 3 cents higher than the rates from the Princeton group. This differential relation has been voluntarily established by the carriers, including respondent herein, serving the Indiana groups. The proposed reductions would increase the above differentials of 12 and 15 cents from the Princeton and Boonville groups to 29 and 32 cents, respectively, over the Brazil-Clinton group."

The Illinois origin groupings and rate relationships are described on pages 610 and 614 of the report of the full Commission of April 18, 1934 (R. 35, 39). The principal Illinois groups involved are the Springfield and southern Illinois groups. Exhibit No. 43 (R. 217), which sets out the shipments of coal from the various groups to Rockford, the most important destination, for the years 1929 to 1932, inclusive, shows that the southern Illinois group is by far the largest shipping group in the Illinois field. It is the base group. The rates from the Springfield group are made 30 cents under the rates from the southern Illinois group. This rate relationship and the other Illinois group relationships are, as stated by the Commission, in conformity with the findings of the Commission in a prior case, *Illinois Coal Cases, 1920,* 62 I. C. C. 741 and 64 I. C. C. 751.

The rates from the western Kentucky field are made 35

cents over the rates from the southern Illinois group pursuant to the differential relationship prescribed by the Commission in *Illinois-Indiana Coal Cases*, 128 I. C. C. 265, and recently affirmed in *West Kentucky Coal Bureau* v. *Illinois Central Railroad Company*, 172 I. C. C. 279. This is explained on page 610 of the report of the full Commission. (R. 35.)

The rates from the various Indiana groups are closely related to the rates from the Illinois groups and are also differentially related to each other but in general these relations have not been fixed by the Commission. (Report of the full Commission, page 610 (R. 35)).

(b) *The Immediate Effect of the Milwaukee's Reductions in Rates Is a Splitting of the Origin Groups.*

The effect of the Milwaukee's reductions in rates from mines on its line in the Brazil-Clinton and Linton-Sullivan groups of 17 cents per ton to Rockford and Freeport, and lesser amounts to intermediate points, upon this highly important competitive rate adjustment is apparent from the foregoing description of the adjustment. The Commission found, page 619 of the report of the full Commission (R. 44) that the immediate effect of the proposed reductions would be a splitting of the Brazil-Clinton and Linton-Sullivan groups. There are numerous mines on other roads in those groups. Only 4 of the 23 mines in the Brazil-Clinton groups and 7 of the 40 mines in the Linton-Sullivan groups are on the Milwaukee, Exhibit 8 (R. 149). The Milwaukee urges that this is of small consequence because approximately 95 per cent of the coal moving from these groups to Rockford and Freeport moves from the mines on its line. Even so, we submit it is not likely that in a highly competitive adjustment such as the one here involved the lines upon which other mines in the two groups

are situated would permit the long existing competitive relationships to be distributed. The extension of the reduced rates to all mines in the respective groups was urged by the Indiana operators, represented by the Indiana Coal Trade Association (R. 102). The Commission commented, page 619 of the report of the full Commission (R. 44) on the likelihood of the extension of any reductions which might be made by the Milwaukee to the mines on other lines in the Brazil-Clinton and Linton-Sullivan groups.

(c) *The Milwaukee's Reductions in Rates Would Cause Corresponding Reductions in Rates from Other Groups in the Indiana Field.*

A more important immediate effect of the Milwaukee's proposals was that the proposed reductions would increase the differentials between the other groups in Indiana and the Brazil-Clinton and Linton-Sullivan groups 17 cents at Rockford and Freeport and lesser amounts at the intermediate points. Exhibit No. 43 (R. 217) showing shipments from various groups to Rockford shows that in 1931 and 1932 the Princeton and Boonville groups in southern Indiana combined shipped approximately the same amount of coal to Rockford as the Brazil-Clinton and Linton-Sullivan groups combined. Their differentials over the Brazil-Clinton or base group would be increased from 12 cents to 29 cents and from 15 cents to 32 cents, respectively. Excerpts from the testimony of the witness for the protesting railroads before the Commission, (the intervening railroad defendants before the District Court) to the effect that reductions in the rates from the other Indiana groups would be inevitable are quoted on page 616 of the report of the full Commission (R. 41). The Commission found, page 619 of the report of the full Commission (R. 44):

> "Such reductions would destroy the differential relations now existing as between those groups and the

other Indiana groups, with the probability of mines and carriers in such other groups seeking similar reductions."

The testimonly of the protestants' witness regarding the effect of the proposed reductions on the Indiana adjustment finds support in the testimony for the Indiana operators which was not referred to by the Commission in its reports. The Indiana operators were represented before the Commission by the Indiana Coal Trade Association whose membership mines produce 80 per cent of all of the coal mined in Indiana and 90 per cent of the coal shipped from the Brazil-Clinton and Linton-Sullivan groups over the Milwaukee (R. 90). Their witness, Mr. Jonas Waffle, Managing Director of the Association, testified (R. 102) that the reductions in rates from the mines on the Milwaukee in the Brazil-Clinton and Linton-Sullivan groups should be extended to all mines in those groups. He was of the opinion, however that the differential between the Linton-Sullivan and the Brazil-Clinton groups of 5 cents should be increased to 10 cents (R. 100, 107). In other words, it was the opinion of the representative of the Indiana operators that the reductions proposed by the Milwaukee from the Linton-Sullivan group which would preserve the differential were 5 cents greater than necessary. Aside from this change in the differential relationship between the Brazil-Clinton and the Linton-Sullivan groups, the witness for the Indiana operators thought the Indiana group relationships should be preserved (R. 102). The witness for the Milwaukee advocated the extension of the 17 cents reductions to the other Indiana groups (R. 90). This means the extension of the reductions from the Brazil-Clinton and Linton-Sullivan groups to the entire Indiana field, exactly what the witness for the protesting carriers before the Commission testified would happen.

(d) *The Milwaukee's Reductions in Rates Would Cause Corresponding Reductions in the Rates from the Illinois and Western Kentucky Fields.*

The Commission further found that the disruption of the rate adjustment would not be confined to the Indiana field but would spread to the Illinois field, stating, page 619 of the report of the full Commission (R. 44):

> "The reductions here proposed if permitted to become effective would result in a level of rates from the Indiana groups lower than that which we stated, in the *Illinois Case,* to be well below the reasonable level of rates in this territory, and would probably lead to further reductions in the Illinois intrastate rates with like reductions in the rates from western Kentucky for the purpose of preserving the differential basis over the rates from the southern Illinois group prescribed by us, thus needlessly sacrificing the carriers' revenues and impairing their ability to render adequate and efficient railway transportation service."

It is necessary to go somewhat further into the relationships between the rates from the Indiana and the Illinois fields in order to appreciate the findings of the Commission on this point. Their history is outlined in the Commission's reports. It is explained on page 610 of the report of the full Commission (R. 35) that for many years prior to 1930 the coal rates from the Springfield group in Illinois and the Brazil-Clinton group in Indiana to the destinations here considered were maintained on a parity, with the rates from both groups 30 cents under the rates from the southern Illinois group. Histories of the rates and relationships are set out in two exhibits, Exhibit No. 2 (R. 144), introduced by the Milwaukee, and Exhibit No. 33 (R. 204), introduced by the Illinois Coal Traffic Bureau. Exhibit No. 2 begins with January 1, 1910. Exhibit No. 33 begins with April 1, 1913, and sets out in addition to the rates the differentials over or under southern Illinois in

cents per ton. It shows that the 30 cent differential Brazil-Clinton under southern Illinois, referred to in the report of the full Commission, was not established in connection with the rates to Freeport until July 19, 1925, and that prior to that time varying lower differentials had been maintained. At one time, July 1, 1917, the rates were the same. The differential prior to the taking effect of the Milwaukee's reduced rates under the injunction of the lower court was 13 cents. Page B of the exhibit, setting out the rates and differentials to Rockford, shows that the 30 cent differential, Brazil-Clinton under southern Illinois, was likewise not established until July 19, 1925, and that prior to that time varying lower differentials had been in effect, ranging as low as 15 cents on December 1, 1916 and 5 cents on July 1, 1917. It is apparent from these exhibits that the many years the 30 cent differential had been in effect were in reality only 5, and that prior thereto the differentials had varied and often been materially less than 30 cents.

It is true that the parity of the Brazil-Clinton group with the Springfield group has been of longer standing, but the important relationships are the relationships to the southern Illinois group. Indiana's real competition is with coal from the southern Illinois group (R. 102, 114, 140).

Both Exhibit No. 2 and Exhibit No. 33 show that prior to the differential of 13 cents which was established on August 20, 1930 by the reduction in the Illinois rates by order of the Illinois Commerce Commission (R. 74), and maintained by virtue of the decision of the Interstate Commerce Commission in the thirteenth section case, *Intrastate Rates on Bituminous Coal in Illinois*, 182 I. C. C. 537, there had been no fixed and consistently maintained relationships between the rates from the Indiana and the Illinois groups. That particular rate litigation, however, had the effect of fixing for the first time relationships between the Indiana and Illinois groups as definite as the

relationships of the Indiana groups to each other and the relationship between the southern Illinois and western Kentucky groups. We believe that the decisions of the Illinois Commerce Commission and the Interstate Commerce Commission in those cases are of sufficient consequence to this proceeding to bear consideration in some detail.

The rates to northern Illinois from the Illinois groups apply principally over intrastate routes and are subject to the jurisdiction of the Illinois Commerce Commission. These Illinois rates were reduced 17 cents per ton in compliance with orders of the Illinois Commission, effective on August 20, 1930 in Illinois Commerce Commission Dockets 13568 and 13569 (R. 74). Appeals were taken from the Illinois Commerce Commission's orders. The appeal from the order in Docket No. 13568 reached the Supreme Court of Illinois and the order was affirmed in *A. T. & S. F. Ry. Co.* v. *Commerce Commission,* 335 Ill. 70. The court's opinion shows that one of the issues was whether the order of the state commission was invalid because in making its finding of unreasonableness it took into consideration existing rates on competitive interstate shipments. The Illinois Supreme Court took the position that the effect of the reduced intrastate rates on the interstate rates and interstate commerce was a matter for the Interstate Commerce Commission (pages 85, 100 of the court's opinion). After their failure to get the order of the Illinois Commerce Commission set aside by the court and the reduced rates were established, the Illinois railroads filed a petition with the Interstate Commerce Commission for an investigation under Section 13 of the Act (R. 75) alleging that the intrastate rates prescribed by the Illinois Commerce Commission were unduly prejudicial to interstate shippers and resulted in unjust discrimination against interstate commerce. Pursuant to this petition the Interstate Commerce Commission instituted the investigation generally referred to in this

proceeding as the thirteenth section case, *Intrastate Rates on Bituminous Coal in Illinois,* 182 I. C. C. 537. Numerous intrastate rates in addition to the rates to Rockford, Freeport and the other destinations involved in this case were involved in the thirteenth section case. The report shows that the Interstate Commerce Commission went extensively into the relationships between the intrastate and the interstate rates. A number of the intrastate rates, including the rates to Chicago, were found unduly prejudicial to interstate shippers and unjustly discriminatory against interstate commerce and required to be increased.

The finding in the thirteenth section case with respect to the relationships between the rates to Rockford and Freeport from the Illinois groups on the one hand and the Indiana groups on the other is set out and discussed on page 611 (R. 36) of the report of the full Commission in the instant case. The Commission found that the principal competition of the Illinois producers at these destinations comes from Indiana. The Commission considered the Illinois rates to be low but likewise found that the rates from Indiana were low and concluded that the Illinois rates could not be found unlawful under Section 13 of the Act until and unless the interstate rates from the Indiana groups to the same destinations were increased to a level more nearly commensurate with the general level of rates on coal in that territory. In this connection it should be noted that the statement in the dissenting opinion of Commissioner McManamy on page 622 of the report of the full Commission (R. 47) to the effect that the Commission had found the rates prescribed by the Illinois Commission not unreasonably low, is incorrect. The Commission *expressly found both sets of rates low but concluded that there was nothing unduly prejudicial or unjustly discriminatory in their relationships.*

In dealing with intrastate rates under the thirteenth sec-

tion the Interstate Commerce Commission deals primarily with relationships. *Florida* v. *United States,* 282 U. S. 194, 214. It therefore could not require the state rates to be increased, inasmuch as nothing was wrong with their relationships to the interstate rates. The decision of the Interstate Commerce Commission in the thirteenth section case constitutes a clear and definite holding that the relationships between the Indiana and the Illinois rates to Rockford and Freeport which were brought about by the 17 cent reduction prescribed by the Illinois Commerce Commission and have been disrupted by the Milwaukee's reductions in its rates, are just and proper relationships and, as we have stated, constitutes the approval for the first time of stable relationships between the Indiana and Illinois rates in this territory.

The Indiana operators contended before the Commission in the instant case that improper comparisons of distances had been used in the thirteenth section case (R. 97, 98). The Commission in the instant case reconsidered the question of distances on the record in the instant case and on page 614 of the report of the full Commission (R. 39) set out the distances which it considered proper. Upon these distances the full Commission concluded that the reduced rates proposed by the Milwaukee would precipitate general downward revisions of the rate structure and were unlawful.

The continued interest of the Illinois Commission and the Illinois operators in the relationships of the Illinois rates to the Indiana rates was manifested in the proceedings before the Commission in this case. The Illinois operators, represented by the Illinois Coal Traffic Bureau, the Springfield Illinois Coal Traffic Bureau and the Consolidated Coal Company, intervened as protestants before the Commission (R. 64, 69, 67) and introduced a considerable amount of testimony in opposition to the proposed reductions through

the witnesses Malum (R. 122) and Rozene (R. 114). The Illinois Commerce Commission's interest in the relationships it brought about by its 17 cent reduction in 1930 is evidenced by its protest to the Interstate Commerce Commission and by the fact that the case was heard jointly before Mr. R. M. Trezise, Examiner for the Interstate Commerce Commission and Mr. G. H. Shafer, of the Illinois Commerce Commission (R. 73). Can there be any doubt that if the reductions made by the Milwaukee in the rates from the Indiana groups are permitted to remain in effect, and the Illinois carriers do not voluntarily reduce the Illinois rates for competitive reasons, the Illinois operators will again complain to the Illinois Commission and that the Illinois Commission will prescribe like reductions to restore the relationships it brought about in 1930? Such a conclusion finds not merely substantial support in the evidence, but it is the only reasonable conclusion that can be drawn from the evidence.

Should the reductions made by the Milwaukee remain in effect permanently and the Illinois Commission prescribe like reductions, it is evident from the result of previous litigation over similar reductions prescribed in 1930 that the last resort of the Illinois roads would be to the Interstate Commerce Commission under the thirteenth section. The relationships before the Interstate Commerce Commission in such a thirteenth section case would be the same relationships that were before it in the prior thirteenth section case, *Intrastate Rates on Bituminous Coal in Illinois,* 182 I. C. C. 537, which it was found did not violate the thirteenth section. The full Commission has concluded in the instant case that it should adhere to its findings with respect to the relationships in the prior thirteenth section case. It is therefore apparent, as the full Commission found, that the net result of the reductions proposed by the Milwaukee would be reductions in the rates from Illinois

to restore the August 20, 1930 relationships with no advantage secured by either the Indiana operators or the Milwaukee and the unnecessary and unwarranted loss by all of the carriers, including the Milwaukee, of revenue from traffic which is already moving on rates that are abnormally low. *We repeat that the decision of the Interstate Commerce Commission in the thirteenth section case materially altered the situation.* That decision for the first time stabilized the relationships between the Indiana and the Illinois rates and, as we have brought out in our discussion of the conflicting jurisdictions of the Interstate Commerce Commission and the Illinois Commerce Commission and their decisions with respect to these relationships, rendered the August 20, 1930 relationships predominant factors in the general rate adjustment which cannot be disturbed without far-reaching consequences.

The principal ground upon which the Milwaukee relied in its effort to justify its proposed reductions in rates from its mines in the Brazil-Clinton and Linton-Sullivan groups was that those reductions would merely restore the competitive relationships with the Illinois groups which existed prior to the 17 cent reduction made in the Illinois rates by the Illinois Commerce Commission on August 20, 1930 (R. 88). Restoration of the prior relationships was the announced purpose of the reductions (R. 74). This aspect of the case was stressed by the District Court in its opinion (R. 50). We submit, however, that it is obvious from what has been said that the circumstances under which the relationships prior to 1930 existed were entirely different from the present circumstances and that the effect of their restoration upon the general rate structure cannot be minimized on the plea that the changes in rates constitute merely the restoration of a pre-existing situation. The Interstate Commerce Commission appreciated fully the disastrous consequences which would follow the Milwaukee's restoration of

the prior relationships and the necessity of forestalling the reductions if the rate structure and the revenues of the carriers were to be preserved.

There is ample evidence to support the Commission's finding that the Milwaukee's proposed reductions in rates from the northern Indiana groups would bring about reductions in the rates from the Illinois groups aside from the jurisdiction of the Illinois Commerce Commission over the Illinois intrastate rates. There is keen competition in the destination territory involved between mines in the groups in southern Indiana and the mines in the southern Illinois group, Exhibit 43 (R. 217). The Commission recognized this and found, page 615 of the report of the full Commission (R. 40):

> "On the other hand, if the suspended rates are permitted to become effective, and the present differential of 15 cents over Brazil-Clinton group rate is maintained, the rate from the Boonville group to the destinations here considered would become 15 cents less than the rate from the southern Illinois group, although the distance is approximately 50 miles less from the latter group, thus tending to precipitate further reductions in the Illinois intrastate rates."

The competitive situation in and of itself endangers the Illinois rates if reductions in the Indiana rates are permitted.

So far as the rates from the western Kentucky field are concerned, it is only necessary to point out that those rates are maintained on a differential of 35 cents over the rates from the southern Illinois group prescribed by the Commission in *Illinois Indiana Coal Cases,* 128 I. C. C. 265 and recently affirmed in *West Kentucky Coal Bureau* v. *Illinois Central Railroad Company,* 172 I. C. C. 279, page 610 of the report of the full Commission (R. 35). The Commission found, page 619 of the report of the full Commission (R. 44), that reductions in the rates from Illinois would be followed by like reductions in the rates from western Ken-

tucky for the purpose of preserving the differential basis over the rates from the southern Illinois group prescribed by it.

(e) *Reductions in Other Rates Which Would Be Caused by the Reductions Made by the Milwaukee Could Not Be Confined to the Destinations to Which the Milwaukee's Rates Apply, but Would Spread to Other Destinations in the Same Territory, Including the Important Chicago District.*

Up to this point we have been considering only the rates to Rockford, Freeport and the other points in northern Illinois to which the reduced rates of the Milwaukee apply. The reductions in rates, however, could not be confined to those particular destinations but would spread to the general territory. Chicago is by far the most important point in this territory, and, indeed, is of far more consequence than all of the other points in northern Illinois combined. In the thirteenth section case, *Intrastate Rates on Bituminous Coal in Illinois*, 182 I. C. C. 537, the Commission prescribed a minimum intrastate rate from the Southern Illinois group to Chicago of $1.95 a ton (R. 43, 129). The present rates from the southern Illinois group to Freeport and Rockford are $2.00 a ton. If these rates were reduced by 17 cents per ton, either by the carriers voluntarily to preserve competitive relationships or by the order of the Illinois Commerce Commission, they would become $1.83. The witness for the protesting carriers further testified that there are routes from southern Illinois to Rockford and Freeport via Chicago over which the present rates apply (R. 129). In so far as these routes are interstate the rates are subject to the long-and-short-haul clause of the fourth section of the Interstate Commerce Act. In so far as they are intrastate the rates are subject to a similar provision of the Illinois Commerce Commission Act. (Chapter 111a,

Section 55, Cahill Illinois Revised Statutes, 1933). The Commission pointed out, page 618 of the report of the full Commission (R. 43), that it would be difficult to justify relief from the long-and-short-haul clause to maintain a rate to Rockford 12 cents lower than to Chicago, inasmuch as Chicago is a much more important market than Rockford and would at least be entitled to a rate no higher than the rate to Rockford. Relief via interstate routes would have to be secured from the Commission which has made this pronouncement. It is not likely that the Illinois Commerce Commission, in view of its natural concern for Illinois shippers and Illinois rates, and its action in prescribing the reductions in 1930, would permit the maintenance of a rate to Chicago higher than the rate to Rockford via intrastate routes. Furthermore, aside from the long-and-short-haul complications, how long would it be possible to maintain a rate to Chicago higher than the rate to Rockford for relatively the same distances from southern Illinois? It is true that the present intrastate rate from southern Illinois to Chicago is a minimum rate prescribed by the Interstate Commerce Commission in the thirteenth section case, but the order in that case does not prevent reductions in the interstate rates from either Indiana or Illinois. The Interstate Commerce Commission would find it difficult to refuse a modification of the thirteenth section order which would restore the relationships on which the intrastate rates prescribed by it were predicated. If the rates from the southern Illinois group to Chicago were reduced, corresponding reductions would have to be made in the rates from all other groups. The Commission took into consideration the probable effect on the Chicago rates, page 618 of the report of the full Commission (R. 43) and its action is amply sustained by the evidence.

(f) *The Findings of the District Court Are Directly Contrary to Those of the Commission on the Same Set of Facts and Cannot Be Sustained.*

We have gone thus at length into the evidence bearing on the effect on the general adjustment of coal rates into territory involved of the reductions in the Milwaukee's rates on account of the divergence in the conclusions reached by the Commission and by the District Court on the same set of facts. Summing up the general situation the Commission stated, page 616 of the report of the full Commission (R. 42):

> "In fact it would be difficult to conceive of a proposal more likely to precipitate unwarranted changes in a keenly competitive rate structure than that here proposed."

The District Court found (R. 56) that the Commission's findings were not supported by the evidence. The court's opinion shows (R. 51) that this conclusion was reached under the impression that the only evidence in support of the Commission's findings with respect to the disruption of the rate structure was the testimony of the witness for the protesting railroads, R. P. DeCamp, General Commerce Agent of the Illinois Central Railroad, who testified that in his opinion the results which have been outlined would be inevitable if the reductions in rates proposed by the Milwaukee were permitted, and other similar opinion testimony. An excerpt from the witness DeCamp's testimony is quoted in the report of the full Commission, page 616 (R. 41). The District Court's opinion shows on its face that its treatment of the testimony of this witness constituted a weighing of the evidence which is not within the province of the court, a point which will be discussed elsewhere. Assuming it were within the province of the court to weigh the testimony, the District Court did not give the

testimony of this witness the weight to which it was entitled. The court held:

> "We do not feel that a mere belief of a witness as to what may happen in the future, even if he be an expert, is entitled to much weight as evidence. The belief in this case does not appear to have been founded upon facts or scientific observation as is required of an expert in any other line before his opinion becomes competent. The finding of the Commission, however, appears to be based solely upon such expressions as to the future effect of the proposed rates of the Milwaukee." (R. 51).

The court was in error as to the basis of the witness' observations. The witness had spent nearly thirty years in the traffic department of the Illinois Central Railroad (R. 127). From 1922 to 1928 he was Assistant Coal Traffic Manager of that railroad charged with the making of freight rates on coal and coke and the defending of them before the Interstate Commerce Commission and the various state commissions. From August 24, 1931 to July 16, 1932, he was Coal Traffic Manager of the Illinois Central Railroad with general supervision over the road's coal and coke traffic, a position corresponding to that held with the Milwaukee Railroad by the Milwaukee's witness before the Commission, Mr. Averitt (R. 74). Witness DeCamp's testimony shows that he was thoroughly familiar with the rate situation presented to the Commission by the proposed reductions of the Milwaukee and that he was amply qualified to express an expert opinion on the effect on the rate structure of the Milwaukee's proposed reduced rates. That opinion was concurred in by the witness Malum for the Springfield Coal Traffic Bureau who testified (R. 127) that, based on his experience in the coal business, there is not any question but that the reductions from the Milwaukee mines in the Brazil-Clinton and Linton-Sullivan groups would spread to other railroads serving those groups and in time go on down to the southern part of Indiana. We

have previously brought out that the witness for the Indiana operators advocates the preservation of the long standing differential relationships among the Indiana groups, with a minor exception. The opinion of the witness DeCamp was further supported by the highly competitive nature of the rate adjustment and its history, both of which were fully reviewed by the Commission in its reports.

Had there been any conflict in the testimony on this point the Commission would have been amply justified in its finding that the proposal of the Milwaukee would result in unwarranted disruptions of the rate structure. But there was no real conflict in the testimony. The Milwaukee did not take the position before the Commission that the reductions in the rates proposed by it would not lead to reductions in other rates and the disruption of the rate structure. The answer of its witness to the question whether the rates if permitted to go into effect would disrupt the rate structure in the general territory was, "Let the future take care of itself" (R. 89). The witness advocated the extension of the 17 cent reduction to the other groups in Indiana (R. 90). The position of the Milwaukee was that it considered the proposed reductions necessary to protect its own individual interests and that other carriers would have to take care of themselves. That is perhaps a natural position for an individual railroad to take, but no such view can be taken by the Interstate Commerce Commission under the duties imposed upon it to preserve the general revenues of the carriers. Its finding that the proposed reduced rates of the Milwaukee would lead to unwarranted reductions in other rates and a general disruption of a most important rate structure was supported by the overwhelming weight of the testimony. The District Court was clearly in error in holding that these findings of the Commission were not supported by substantial evidence.

2. THE COMMISSION'S FINDING THAT THE PROPOSED REDUCTIONS WOULD RESULT IN THE UNNECESSARY SACRIFICE OF THE REVENUES OF THE CARRIERS IN GENERAL IS FULLY SUPPORTED BY THE EVIDENCE.

The Commission pointed out on page 621 of the report of the full Commission (R. 46) that under the Transportation Act of 1920, in which the minimum rate power was granted, there was imposed upon it the affirmative duty "to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States." The Commission further pointed out that, as this court recently held in *Florida* v. *United States,* 292 U. S. 1, the amendment of Section 15a (2) by the Emergency Transportation Act of 1933 discloses no intention to weaken national control for essential national purposes over the railway system of the country, but instead emphasizes the carriers' need of adequate revenues and was designed to aid that control in the light of the depressed economic condition of the railways.

In the preceding section of this brief we have brought out that the Commission's findings that the effect of the proposed reductions of the Milwaukee would be corresponding reductions of the rates in general throughout the territory affected are the only findings which could have been made upon the record presented to the Commission. The effect of such reductions on the revenues of the carriers in general is dealt with on pages 618 and 619 of the report of the full Commission (R. 43). It is brought out that, based on the coal tonnage to Rockford, the most important destination to which reduced rates were proposed, in 1932 from the Illinois, Indiana and western Kentucky fields, Exhibit No. 43 (R. 217) a 17-cent general reduction would result in an annual revenue loss to the carriers approximating $48,600.00. This item alone is of material

consequence in the light of the depressed economic condition of the railways. The losses in revenue on the traffic of the entire territory to which reduced rates were proposed would of necessity be much greater.

It has also been brought out in a preceding section of this brief that the Commission properly found that the destination territory to which reductions in rates would be made could not be restricted to Rockford, Freeport and the other destinations to which the reduced Milwaukee rates apply. The reductions would inevitably spread to other points in the general territory, including the Chicago district, one of the most important consuming points for coal in the entire country. The present rate from the Southern Illinois base group to Chicago is $1.95 a ton, prescribed by the Interstate Commerce Commission in the thirteenth section case (R. 129). The likelihood of the carriers being able to maintain higher rates to Chicago than to Rockford is slight, as the Commission found. A reduction of 17 cents in the present rate to Rockford from southern Illinois of $2.00 per ton would produce a rate of $1.83 per ton. Reduction of the Chicago rates to the Rockford basis would mean a general reduction in the Chicago rates of 12 cents per ton. The loss in revenue to the carriers in general from such a reduction would of necessity be tremendous. This was fully appreciated by the Commission, as it clearly indicated by pointing out, page 618 of the report of the full Commission, that it found in the thirteenth section case that a reduction of only 5 cents a ton on the annual tonnage which moved to Chicago in recent years would amount to more than $600,000.00 and that based upon the same tonnage a reduction of 12 cents per ton would have entailed an annual loss in revenue exceeding $1,400,000.00. The report in the thirteenth section case, *Intrastate Rates on Bituminous Coal in Illinois,* 182 I. C. C. 537, 545, shows that the annual tonnage to Chicago referred

to was the tonnage from the Indiana, Illinois and western Kentucky fields. That case was submitted in December, 1931. After making full allowance for reductions in the consumption of coal since the case was submitted due to the depression it is still obvious that a 12 cent reduction could not be made in the rates to Chicago without entailing serious losses in revenue.

The Milwaukee conceded in its testimony (R. 74, 83, 90) that the rates to Rockford, Freeport and the other points involved, and, in fact, all of the coal rates in this territory, were unduly low. The Commission stated, page 617 of the report of the full Commission (R. 42), that it itself has recognized that the basis of rates on coal in Illinois territory is the lowest in the country, due to the intense carrier and commercial competition. This means that the coal traffic in this territory is already contributing a relatively small share to the maintenance of the general national transportation system. The Interstate Commerce Commission is properly concerned with any further reduction in the level of these rates and any further diminished contribution of this traffic to the maintenance of the national transportation system it is under the duty to foster and conserve. The Commission would have been remiss in this duty had it not taken the action which is now under review.

It is evident from the highly competitive situation and the prior decisions of the Illinois Commission and the Interstate Commerce Commission that the Milwaukee reductions will soon bring about corresponding general reductions in the rates from the other groups if permitted to remain in effect permanently and that even any advantage the Milwaukee may obtain will be short-lived. The Interstate Commerce Commission's finding that the proposed reductions, if permitted, would entail a serious and wholly unnecessary sacrifice of carrier revenues is amply supported by the record and the Commission's action to pre-

vent this loss in revenue pursuant to the duty placed upon it by the Commerce Act is valid and should be sustained.

The holding of the District Court (R. 53) that there is no evidence in the record that the proposed rates of the Milwaukee, if allowed to stand, would so affect the earning capacity of any other railroad as to prevent its earning a fair return misconceives the Commission's duty under the law and wholly ignores the testimony which we have reviewed. It is clearly in error.

3. THE COMMISSION'S FINDING THAT THE THEN EXISTING RATE RELATIONSHIPS HAD NOT RESULTED IN A DECREASED MOVEMENT OF COAL FROM THE INDIANA GROUPS TO THE DESTINATIONS INVOLVED IS SUPPORTED BY SUBSTANTIAL EVIDENCE. THE REDUCTIONS IN RATES PROPOSED BY THE MILWAUKEE WERE NOT NECESSARY TO ENABLE IT TO COMPETE FOR THE COAL TRAFFIC OF THE DESTINATION TERRITORY AND THE COMMISSION'S ORDER DID NOT DEPRIVE THE MILWAUKEE OF ITS RIGHT TO COMPETE.

The announced purpose of the Milwaukee in proposing reductions of 17 cents per ton in the rates from mines on its line in the Brazil-Clinton and Linton-Sullivan groups to Freeport and Rockford was to restore the relationships to the rates from Illinois mines which existed prior to August 20, 1930, when reductions of 17 cents per ton were made in the Illinois rates by order of the Illinois Commerce Commission. The Milwaukee contended below that the enforcement of the order of the Interstate Commerce Commission here involved would have the effect of depriving it of its right to compete for the coal traffic in this territory. We shall show that the record does not support this contention. To the contrary it shows that the Milwaukee has continued to compete successfully for the coal traffic of this territory under the rate relationships established on August 20, 1930,

and that there is no reason for assuming that it would not continue to compete with rates bearing the same relationships in the future.

So far as the evidence it placed before the Interstate Commerce Commission is concerned, the Milwaukee relied on bare assertions for sustaining its contention that the 17 cent reduction in the Illinois rates had prevented it from competing for the coal traffic in northern Illinois and that it was necessary to restore the prior relationships.

The protestants, however, introduced testimony which showed affirmatively that the change in the Illinois rates on August 20, 1930, did not have the effect of prohibiting the Milwaukee from competing, but on the contrary it has continued to compete since the change in rates just as it did before that date. The protestant Illinois Central Railroad Company introduced Exhibit No. 43 (R. 217), a statement showing in tons the amounts of coal received at Rockford from the various mine groups in Illinois, Indiana and western Kentucky during the years 1929 to 1932, inclusive. The exhibit begins with 1929, the last full year during which the relationships the Milwaukee was seeking to restore were in effect, and ends with 1932, the last full year for which figures were available at the time of the hearing in February, 1933. This exhibit constitutes definite and specific evidence of the effect the change in rates had on the movement of coal to Rockford and shows that the relationships of rates the Milwaukee sought to disrupt did not prevent the Milwaukee from competing. The exhibit is summed up as follows on page 613 of the report of the full Commission. (R. 38):

> "An exhibit, as corrected at the argument, introduced by the Illinois Central Railroad Company, protestant, indicates that the volume of coal moved to Rockford in 1932 from the southern Illinois group was 42.7 per cent of that moved in 1929, from the Springfield group 245 per cent, from the Brazil-Clinton group 39.6 per cent,

and from the Linton-Sullivan group 88.1 per cent, from all groups in Illinois 53.4 per cent, and from all groups in Indiana 87.7 per cent. The same exhibit indicates that the volume of coal moved to Rockford in 1931 from the southern Illinois group was 54.3 per cent of that moved in 1929, from the Springfield group 187.7 per cent, from the Brazil-Clinton group 58.4 per cent, from the Linton-Sullivan group 42.5 per cent, from all groups in Illinois 58.4 per cent, and from all groups in Indiana 88.7 per cent. The carrier used 1929 for this comparison because that was the first full year prior to the reductions in the Illinois intrastate rates. The increase in the tonnage of coal from the Springfield group to Rockford during 1931 and 1932 over the tonnage shipped in 1929 resulted from the distribution of coal for relief purposes at Rockford which coal was purchased at mines in the Springfield group because of the low prices prevailing in that group. This exhibit was introduced for the purpose of showing that, with the exception of the coal shipped from the Springfield group to Rockford for relief purposes, the decrease in the volume of traffic from the Indiana mines to the destinations here considered, during 1931 and 1932, compared with the 1929 traffic (the year prior to the reduction in the rates from the Illinois mines), was less than the decrease in the movement from the Illinois mines to the same destinations during the same period. On the record we are of the opinion that the percentage of the tonnage from the Indiana groups to the destinations herein considered during the period shown had not decreased as a result of the reduced rates from the Illinois groups."

The correction at the argument before the full Commission consisted of a statement by counsel for the Illinois Central that the contention of the Milwaukee at the argument before Division 2 of the Commission that in setting out the 1929 movement the Brazil-Clinton tonnage had been shown as the Linton-Sullivan tonnage and the Linton-Sullivan tonnage had been shown as the Brazil-Clinton tonnage had been investigated and found correct. This contention of the Milwaukee is referred to on page 247 of the report

of Division 2 in 197 I. C. C. (R. 9). The increased movement from the Springfield group on account of the use of the cheap Springfield coal for poor relief purposes was testified to by the witness Seaberg (R. 113), salesman at Rockford for one of the Illinois coal companies (R. 108). Aside from the transposition of the Brazil-Clinton and Linton-Sullivan tonnages for the year 1929, the Milwaukee does not contest the correctness of Exhibit No. 43. On page 6 of the bill of complaint (R. 4) the Milwaukee stresses the increased movement from the Springfield district. But this is due to the use of cheap Springfield coal for poor relief (R. 113), a condition not attributable to the freight rates. Furthermore, all witnesses agree that Indiana's real competition is with southern Illinois. (R. 102, 114, 140). Formal finding of fact IV (R. 55) made by the District Court refers to the increase in the movement from the Springfield group to Rockford and attributes it to the reduction in rates made by the Illinois Commission. The ignoring of the testimony regarding the use of Springfield coal for poor relief and the movements from the other groups specifically set out by the Commission are difficult to understand.

It was contended before the court below that Exhibit No. 43 cannot be relied upon as portraying correctly the effect of the change in rates on account of strikes at the mines in the year 1932, which caused the movement from Illinois to be abnormally low. There is no support in the record for such a position. Leaving out of consideration the year 1932 and referring only to comparisons of 1929 with 1931, we find, as the Commission states, that the movements of coal to Rockford in 1931 were the following per cents of the movements in the year 1929: from the southern Illinois group 54.3 per cent, from the Springfield group 187.7 per cent, from the Brazil-Clinton group 58.4 per cent, from the Linton-Sullivan group 42.5 per cent, from all groups in Illi-

nois 68.4 per cent, and from all groups in Indiana 88.7 per cent. Furthermore, comparing the 1932 tonnages from the Indiana groups with the 1931 tonnages we find that although the movement from the Linton-Sullivan group increased, the movement from the Brazil-Clinton group decreased and the total movement from both groups was less in 1932 than in 1931. There was a large increase in the movement from the Princeton group in southern Indiana in 1932 over 1931. While this may be partially attributable to the freedom from strikes in 1932 (R. 113), the principal reason was the transfer of certain mines from the Boonville group to the Princeton group (R. 133). Combining the tonnages for the two groups, we find that the movement in 1932 was 45,688 tons against 42,560 tons in 1931.

In addition to Exhibit No. 43 there was the testimony on behalf of the protestants of the witness W. M. Seaberg, salesman for one of the Illinois companies in Rockford, Freeport and the surrounding territory (R. 108). Mr. Seaberg testified to the general effect that there was still keen competition between Indiana and Illinois coals in this territory (R. 109) and that while the movement of all kinds of coal to both Rockford and Freeport has decreased materially in the past four years, the decrease in southern Illinois coal has been a great deal larger than the decrease in Indiana coal. Mr. Seaberg gave instances of companies which have changed from Illinois coal to Indiana coal (R. 110). The testimony of the witness Leahy, Vice President of the Binkley Coal Company, one of the Indiana operators, was principally in rebuttal of the testimony of the witness Seaberg. He stated that his company's principal customer at Rockford was the Rockford Electric Company (R. 139) and gave the circumstances surrounding the contract in some detail. Recently there had been a decrease in the consumption of coal by this plant due to a new hook-up under which a part of the power is supplied from the electric

plant at Waukegan, Illinois. This, of course, is not attributable to the freight rates. Mr. Leahy further testified that changes by consumers from one coal to another are rather frequent occurrences in recent years (R. 140).

The only conclusion which could possibly be drawn from the testimony of the witnesses Seaberg and the witness Leahy is that there has been keen competition between Indiana and Illinois coals in the territory in northern Illinois here involved and that it cannot be contended that the relationships in freight rates the Milwaukee sought to disrupt have shut the Indiana operators out of this market or unjustly deprived the Milwaukee of its coal traffic. The Milwaukee was freely competing under the then existing relationships, and it is obvious, as was found by the Commission on page 612 of the report of the full Commission, that the proposed reduced rates reestablish the advantage the Indiana groups had over their Illinois competitors prior to the reduction in the Illinois rates in August, 1930. The proposed reductions were such reductions as the Commission correctly concluded would precipitate counter-reductions from other groups to restore relationships with the net result of generally lower revenues from traffic already moving on a subnormal level of rates.

III.

THE DISTRICT COURT EXCEEDED ITS PROPER AUTHORITY AND JUDICIAL FUNCTION IN ENTERING UPON A DETERMINATION UPON CONFLICTING EVIDENCE OF THE FACT QUESTIONS PRESENTED IN THE CASE BEFORE THE COMMISSION AND THUS USURPED THE ADMINISTRATIVE FUNCTION OF THE COMMISSION.

It is the settled rule of law that whether upon the consideration of the same testimony the court would have reached the same conclusion as the Commission is not a question

for judicial determination. It is not within the province of the court to weigh the testimony or substitute its judgment for that of the Commission. *Manufacturers Ry. Co.* v. *United States,* 246 U. S. 457, 482, *New England Divisions Case,* 261 U. S. 184, *Western Paper Makers Chemical Company* v. *United States,* 271 U. S. 268, *Florida* v. *United States,* 292 U. S. 1. Even a casual examination of the opinion of the District Court will show that the court did weigh the evidence, substitute its judgment for that of the Commission, and, in short, deal with the case generally as if it were determining what order it would have entered had the case been decided by the court in the first instance.

Much of the testimony before the Commission was addressed to the effect of the Milwaukee's proposal upon the general rate adjustment. This evidence has been reviewed in a preceding section of the brief. Upon it the Commission found that the reductions in rates proposed by the Milwaukee would lead to wide spread and unwarranted reductions in the general rate structure. The District Court held that the findings of the Commission on this point were based solely upon expressions of opinion of witnesses as to the future effect of the proposed rates of the Milwaukee similar to the expression of opinion of the protestants' witness DeCamp, quoted from by the Commission on page 616 of the report of the full Commission (R. 41).

The testimony in question was to the effect that wide spread reductions in rates would be inevitable. The District Court held with respect to this testimony (R. 51):

> "We do not feel that a mere belief of a witness as to what may happen in the future, even if he be an expert, is entitled to much weight as evidence. The belief in this case does not appear to have been founded upon facts or scientific observation as is required of an expert in any other line before his opinion becomes competent."

This is an express weighing of the testimony. Further-

more, the court was in error as to the witness's qualifications and the competency of his testimony. He had had many years of experience in making rates, held responsible positions with the Illinois Central Railroad which involved especially the making and defending of rates on coal, and was thoroughly familiar with the rate adjustment involved and its history (R. 127). The Commission was dealing in this case with the probable effect of the Milwaukee's proposals on the general rate structure. Evidence as to what may happen in the future of necessity consists of expressions of opinion by competent witnesses. It is not within the province of the court to disagree with the Commission merely because this court gives less weight to the testimony than the Commission did.

Furthermore, the District Court was in error in disregarding altogether the highly competitive nature of the rate adjustment involved and its history, including the reductions in the Illinois rates ordered by the Illinois Commerce Commission and the litigation before the Interstate Commerce Commission with respect to the relationship between the Illinois and Indiana rates in the thirteenth section case, all of which were stated by the Commission in its reports with unusual care. It was not within the province of the court thus to ignore important evidence upon which the Commission expressly relied.

The substitution by the District Court of its judgment for that of the Commission is clearly indicated by its passing upon points which were not passed upon by the Commission and its stressing of aspects of the case to which the Commission attached little or no consequence.

For example, the District Court held in its opinion (R. 51):

> "There seems to be no question but that the Milwaukee is in a position to serve the mines in the Brazil-Clinton and Linton-Sullivan groups which are on its

lines at a much cheaper rate than other carriers whose lines touch coal mines in the same vicinity and more cheaply than the lines in Illinois can carry from the northern Illinois and Springfield groups to Rockford and Freeport."

There was no evidence before the Commission with respect either to the cost of the Milwaukee in handling coal from its mines in the Brazil-Clinton and Linton-Sullivan groups or the cost of other carriers in handling coal from their mines in those groups. It did appear that the Milwaukee had a single line route from the mines on its road and that the distances from many of its mines are shorter than the distances from other mines, but these are by no means the only elements in the cost of transporting traffic. There was no evidence whatsoever bearing on the costs of other carriers of transporting coal from mines in the Illinois groups and no basis for a comparison of costs or the formation of a conclusion as to whether or not the differences in rates properly reflected differences in costs. The Commission made no finding on the point, but there was no concession, either on the part of the Commission or on the part of the protesting railroads, that the costs of the Milwaukee were actually or relatively less than the costs of other carriers. Furthermore, had it been shown and had the Commission found that the costs of the Milwaukee were actually or relatively less than the costs of other carriers, such a finding would not have invalidated the Commission's order. The question being determined by the Commission was the effect of the Milwaukee's proposal upon the general rate structure and the revenues of the carriers as a whole. This does not depend upon whether either the rates proposed by the Milwaukee or the reduced rates of the other carriers which the Milwaukee's reductions would bring about would yield something more than the cost of handling the traffic. Such a test was rejected by the Commission in one of its first decisions dealing with the minimum rate

power. In *Ex Lake Iron Ore from Chicago to Granite City*, 123 I. C. C. 503, after stating that it is not enough merely to show that the proposed rates would result in gain rather than loss to the publishing carrier the Commission said, page 504:

> "But our authority, in our opinion, goes further. We are justified in condemning a proposed rate as too low if the evidence warrants the conclusion that it will, because of its lowness, tend to precipitate changes in rate structure or in traffic which will be harmful to the public interest, having in mind our responsibility for railroad earnings in general under section 15a."

It was argued in *Jefferson Island Salt Mining Co.* v. *United States*, 6 Fed. (2d) 315, that the Commission exceeded its power in prescribing a minimum rate because it had not been shown that the existing rate which that minimum rate required to be increased was non-compensatory or in itself unreasonably low from the carrier's viewpoint. The court pointed out, page 318 of the opinion, that such a rule would cut the heart out of the 1920 amendments to the Interstate Commerce Act. This is obviously correct. An adequate national transportation system cannot be maintained on a system of rates which, if prescribed by a regulatory body, would be barely above the red line of confiscation. The absence of a determination of whether or not the rates were non-compensatory is stressed in other portions of the opinion of the District Court. The District Court was clearly in error in considering whether or not the Commission should have made other findings of fact. The question for its determination was whether or not the findings of fact the Commission did make supported the order and in turn were supported by the evidence.

That the District Court substituted its judgment for that of the Commission is further indicated by the following statement in the opinion (R. 52):

> "There is no evidence in the record that the present

> rate structure is fair or that it is reasonable; no evidence that its disruption would necessarily lead to the introduction of unfair or unreasonable rates. Further, that situation is within the control of the Commission. It is not necessary that it sanction other changes of rates, if such new rates are below a reasonable minimum, or are non-compensatory."

The court was clearly in error with respect to the fairness and reasonableness of the present rate structure. We have shown in dealing with the history of the adjustment that the Commission brought out in its report that the present structure has been before it in many cases and has either prescribed or approved it in practically all of its important aspects, and particularly with respect to the relationship between the Indiana and Illinois rates in the thirteenth section case. The Milwaukee conceded and the Commission found, as it had in other cases, that the rates were well under reasonable maximum rates. The point we wish to emphasize here, however, is the conclusion of the District Court that the Commission should not exercise its minimum rate power at this time but wait until other reductions in rates are made and then determine whether those rates are reasonable minimum rates. It was not for the court to say how the Commission shall exercise its minimum rate power. Its province was to determine whether the manner in which the Commission did exercise its power was valid. We submit that the Commission was obviously correct in dealing with the unwarranted disruption of the rate structure in its inception and not waiting until other reductions had followed and its actions would be seriously hampered by the mere fact it had permitted the Milwaukee's reductions and the conflict between its jurisdiction and the jurisdiction of the Illinois Commerce Commission over the Illinois intrastate rates.

It is clear from the face of the opinion of the District Court that the court undertook to weigh the evidence and

substituted its judgment for that of the Commission. The general effect of sustaining the decision of the District Court would be to permit rate relationships and ultimately the level of the rates to be determined by the carriers under the protection of the court rather than by the Commission as the law provides.

IV.

THE COMMISSION'S ORDER DOES NOT UNFAIRLY DISCRIMINATE AGAINST THE MILWAUKEE AND IS NOT ARBITRARY IN THAT IT IMPROPERLY DISREGARDS THE DISTANCES FROM THE MILWAUKEE'S MINES.

1. THE COMMISSION'S ORDER DOES NOT DISCRIMINATE AGAINST THE MILWAUKEE BY PROHIBITING IT FROM COMPETING FOR THE TRAFFIC INVOLVED AND DOES NOT CONSTITUTE AN UNWARRANTED INTERFERENCE WITH THE MILWAUKEE'S MANAGERIAL DISCRETION WITH RESPECT TO THE PUBLICATION OF COMPETITIVE RATES.

The District Court made a formal finding of fact (R. 56) that the Commission's order was unfair and discriminated against the Milwaukee. In its opinion the District Court said with respect to the right of the Milwaukee to publish competitive rates (R. 52):

> "Further, the Milwaukee has the right within the zone of reasonableness to adopt such rates as will enable it to obtain or retain desired traffic for its own lines. *Texas and Pacific Railway Company* v. *United States, Supra.*"

Preceding this statement, the District Court had said (R. 51):

> "The carrier has a right to initiate rates. *United States* v. *Illinois Central Railroad Company,* 263 U. S. 516. There is no presumption that a rate so initiated is unreasonably low."

There can be no doubt about the right of a carrier to ini-

tiate rates for competitive or other reasons, but there also can be no doubt that the rates when initiated are subject to the Commission's power of review and regulation under Section 15 (7) and the other sections of the Act. *United States* v. *Illinois Central Railroad Company*, 263 U. S. 515, cited by the District Court does not support any proposition that a carrier is unlimited in its right to initiate and maintain rates for competitive purposes. The court evidently relied on the following statement on page 522 of the opinion in that case:

> "A carrier is entitled to initiate rates and in this connection to adopt such policy of rate-making as to it seems wise."

The case involved the policy of the Illinois Central Railroad of maintaining for purely competitive reasons lower lumber rates from points on its own line than it was willing to concur in from points on lines of its connections. The practice was condemned under Section 3 of the Act prohibiting undue prejudice. Referring to the Transportation Act of 1920 this court said in that case, page 525:

> "In view of the policy and provisions of that statute, the Commission may properly have concluded that the carrier's desire to originate traffic on its own lines, or to take traffic from a competitor, should not be given as much weight in determining the justness of a discrimination against a locality as theretofore. *For now, the interests of the individual carrier must yield in many respects to the public need, Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563; *New England Divisions Case*, 261 U. S. 184; *and the newly conferred power to grant relief against rates unreasonably low may afford protection against injurious rate-policies of a competitor, which were theretofore uncontrollable.*" (Italics ours.)

The other case cited by the District Court in support of its position with respect to the right of a carrier to initiate rates to meet competition is *Texas & Pacific Railway Company* v. *United States*, 289 U. S. 627. This is the so-called

Galveston case in which an order of the Interstate Commerce Commission dealing with export and import rates under Section 3 of the Act was held void on two grounds, first, that a port is not a locality within the meaning of Section 3 (1), and, second, that the carriers against which the order was directed did not have such effective control over the rate situation as to enable them to remove the undue prejudice by their own act. The District Court was evidently relying upon a statement on page 636 of the opinion with respect to the maintenance of competitive export and import rates to and from competing ports, which is as follows:

> "As the carriers are in competition for the business they may, within the zone of reasonableness prescribed by the statute, adjust their rates so as to obtain or retain the desired traffic for their own lines."

A footnote referring to the term "zone of reasonableness" reads:

> "Since 1887, section 1 has forbidden that an export or import rate be unreasonably high; and since the Transportation Act, 1920, the Commission has been charged to see that the rate be not so low as to render the receipts of the business unremunerative."

This footnote, and other statements in the opinion, indicate that what the court had uppermost in its mind with respect to the lower limit of the zone of reasonableness in that case was whether or not the rates were compensatory. That does not mean, however, that that is the only test for determining whether a rate is below the lower limit of the zone of reasonableness. There was no suggestion of a rate war in that case. It was the order of the Commission which would have changed the existing situation, and not rates initiated by the carriers. The Commission's order was entered solely under Section 3 of the Act and not in the exercise of any minimum rate power, as stated by the court on page 650 of the opinion.

The decisions reviewed under the section of this brief dealing with the minimum rate power of the Commission clearly recognize that rates which would bring about unwarranted reductions in the general rate structure and the unnecessary dissipation of the carriers revenues, thereby endangering the maintenance of an adequate national transportation system, are unreasonably low and therefore not within the zone of reasonableness, as well as being in violation of section 15a (2) of the Act. It was specifically held in *Jefferson Island Salt Mining Co.* v. *United States,* 6 Fed. (2d) 315, that the Commission is not obliged to find a rate non-compensatory before suspending it as unreasonably low and prescribing a higher minimum rate. In *Mississippi Valley Barge Line Co.* v. *U. S.,* 292 U. S. 282, this court referred, page 287 of the opinion, with evident approval to the Commission's sedulous endeavor to guard against a rate war that would end in mere oppression.

The evidence showed and the Commission found (R. 39) that the Milwaukee was participating freely in the transportation of coal to the destination territory involved, a point which has been covered in a preceding section of this brief. There is a wide difference between prohibiting a carrier which has not been able to participate in a particular traffic from initiating rates which would enable it to participate and preventing a carrier which is already freely participating from making reductions in rates which will give it further advantages and precipitate like reductions in the rates of competing carriers.

2. THE COMMISSION DID NOT ARBITRARILY DISREGARD THE DISTANCES FROM THE MILWAUKEE MINES AND DID NOT UNJUSTLY REQUIRE THE CANCELLATION OF RATES RELATIVELY HIGHER, DISTANCE CONSIDERED, THAN THE RATES IN WHICH THE MILWAUKEE WAS COMPELLED BY THE ILLINOIS COMMERCE COMMISSION TO JOIN WITH OTHER RAILROADS FOR THE MOVEMENT OF COAL FROM ILLINOIS MINES TO DESTINATIONS IN NORTHERN ILLINOIS.

The District Court made a formal finding of fact, finding No. VI, (R. 55) that the rates proposed by the Milwaukee in the tariff ordered to be canceled were relatively higher, distance considered, than the rates in which the Milwaukee was compelled to join with other railroads for the movement of coal from Illinois mines to the destinations in northern Illinois. The court's opinion does not disclose clearly that in making this finding of fact the court took into consideration only the distances from the mines on the Milwaukee in the origin groups. Statements in the opinion, however, indicate that what the court had in mind was the distances from the mines on the Milwaukee alone. For example, it said (R. 51) that the Milwaukee was in a position to serve mines in the Brazil-Cinton and Linton-Sullivan groups on its line at a much cheaper rate than the other carriers whose lines touched coal mines in the same vicinity and more cheaply than the lines in Illinois can carry coal from the northern Illinois and Springfield groups. It has been brought out in a previous section of this brief that the record would not support a finding as to the relative costs of any of the carriers involved and that no such finding was made by the Commission. The District Court further stated in its opinion (R. 53) that there is nothing in the act authorizing the Commission to compel a carrier to charge a higher rate in order to favor other mines less favorably located, or to

increase the revenue of other carriers having a less direct route to the destinations involved. This likewise indicates that the court was considering distances from the Milwaukee mines alone.

The Milwaukee contended before the Commission and before the District Court that inasmuch as reductions from mines on its line alone were proposed the Commission could consider only rates and distances from the Milwaukee mines and the individual interests of the Milwaukee (R. 82, 87). The Commission is under the duty of fostering and preserving the national transportation system and can take no such narrow view of the case, but in passing upon the reductions proposed must take into account the general rate structure of which they are a part and the effect they would have upon it.

The present Brazil-Clinton and Linton-Sullivan rates are group rates applying from all points in those groups and have long been so maintained. While the reductions proposed by the Milwaukee apply only from mines on its line, the record shows that like reductions would be made from the mines on other lines in those groups, in which reductions the Milwaukee is willing to join. (R. 90.) The proposed rates can properly be considered as group rates and not merely as point to point rates from mines on the Milwaukee. The Indiana Coal Trade Association took no such narrow view of the case as the Milwaukee did, but took the position (R. 91) that the proposed reductions could be justified for application from all mines in the Brazil-Clinton and Linton-Sullivan groups and its exhibits show average distances from all mines in those groups as well as the distances from the Milwaukee mines alone.

The witness for the Milwaukee contended (R. 78) that the proposed rates of the Milwaukee were relatively higher than rates it was required by the orders of the Illinois

Commerce Commission to join in with other carriers from the Springfield and southern Illinois groups and the District Court so found in the finding to which we have referred. The Commission did not arbitrarily disregard this contention. It is discussed in the report of the full Commission and the Commission, referring first to the use of the average distances previously set out in the report, there stated (R. 39):

> "The Milwaukee objects to the use of the average distances as shown in the above table. It contends that the distances should be computed over its direct route and only from the mines on its line. For example, from mines on its line in the Brazil-Clinton group, the average distance over its direct route to Rockford is 231 miles. It compares the proposed rate of $1.70 from the Brazil-Clinton group to Rockford for 231 miles with a like rate from the Springfield group to Rockford for the average distance from all origins and over all routes, in an attempt to prove that the proposed rate from the Brazil-Clinton group is higher, distance considered, than the rate from the Springfield group. Such a comparison is worthless because like things are not compared. If the short tariff distances from mines on the Illinois Central in the Springfield group were used in comparison with the distance of 231 miles from mines on the Milwaukee in the Brazil-Clinton group, the comparison would favor the Springfield group from which the short tariff distance to Rockford is 199 miles. Such a method of computing distances would tend to destroy all groupings and cannot be adopted."*

As the Commission pointed out, average distances should be used, but if distances from only those mines on certain roads in the various groups are compared there are comparisons which favor the rates from the mines in the Illi-

* The importance of the group method of making rates on coal is indicated by the following cases before the Interstate Commerce Commission in additional to those referred to in the Commission's reports in this proceeding: *Intrastate Coal Rates to East St. Louis*, 161 I. C. C. 371, 379. *Intrastate Rates on Bituminous Coal Within Ohio*, 192 I. C. C. 413, 450, *Central Coal Producers' Assn.* v. *B. & O. R. R. Co.*, 196 I. C. C. 203, 227, *Lake Cargo Coal Cases, 1930*, 181 I. C. C. 37, 51, *Royal Route Co.* v. *A. G. S. R. R. Co.*, 182 I. C. C. 85, *Corporation Commission of North Carolina* v. *Aberdeen & R. R. R. Co.*, 200 I. C. C. 571.

nois groups as well as those which favor the Milwaukee's proposed rates from its mines in Indiana stressed in its testimony.

The Commission has selected from the record and set out on page 614 of the report of the full Commission (R. 39) the rates and average distances from the principal groups involved, the Springfield, southern Illinois, Brazil-Clinton and Linton-Sullivan groups. Obviously the Commission could not embody in its report all of the hundreds of distances in the various exhibits and it cannot be assumed that merely because a distance was not mentioned it was not considered. Each of the rate witnesses who testified introduced a series of exhibits in which rates and average distances from the important groups were set out. For example, average distances from the Brazil-Clinton group to Rockford are shown in Averitt's Exhibit No. 3, (R. 145) Waffle's Exhibit No. 10 (R. 159), Rozene's Exhibit No. 27 (R. 183) and DeCamp's Exhibit No. 40. (R. 215.) These exhibits likewise show rates and distances from other groups. The exhibits introduced by the witness Malum, Exhibits Nos. 34 to 37, inclusive, (R. 206-213) show average distances from the Springfield group. The average distances shown by the different parties vary somewhat and are conflicting in many respects, but generally speaking, the discrepancies are not sufficient to be of vital importance. Much of the testimony, however, was taken up with disputes over methods of figuring average distances. The Commission has selected the average distances via the short tariff routes, *i. e.*, the average distances via the shortest routes via which the rates actually apply and not via the shortest possible routes. This method of figuring distances was approved by the Indiana operators (R. 104). The witness for the Milwaukee referred to the practical impossibility of determining the average distances via the shortest possible routes over which carload traffic might be interchanged. (R. 77)

Rates on coal have not been made on distance alone, as the record in this case demonstrates, and cannot be so made. The witness for the Indiana Coal Trade Association correctly stated (R. 108):

> "Well, distance is not the controlling factor. You have got to remember that in making rates on a natural resource, that must be produced where God Almighty laid it down. You cannot observe mileage. There are competitive conditions that must be taken into consideration, in making the rates on coal. There is absolutely no consistency in the coal differentials. Go down through the volumes of the Interstate Commerce Commission, and you can find anything you want; you can get a 15-cent differential for 215 miles. There is no consistency in them. I do not believe anybody knows the real science of figuring out what a differential should be. I have never found it, at least.'

This court has recognized that distance is only one element to be considered in the fixing of rates. *Interstate Commerce Commission* v. *Union Pacific Railroad Company*, 222 U. S. 541, 551; *Louisville & Nashville Railroad Company* v. *United States*, 238 U. S. 111. The Commission's report shows that it has given every consideration to the element of distance to which it is entitled in this highly competitive group rate adjustment:

It is true that the Commission did not deal with the case solely from the point of view of the Milwaukee. It took into consideration the effect of the Milwaukee's proposals on the general rate structure and the earnings of the carriers as a whole. Had it done otherwise the Commission would have been remiss in the duty which this court had repeatedly held was imposed upon it by the Transportation Act, 1920, and recently held was in nowise diminished by the amendment made by the Emergency Transportation Act of 1933. The action which the Commission took in this case in the performance of that duty was by no means arbitrary or unreasonable.

Conclusion.

The Interstate Commerce Commission's order enjoined by the court below constituted a valid exercise of the Commission's power under the Interstate Commerce Act to prohibit the establishment of unreasonably low rates which would disrupt an important existing rate structure and result in a serious and unwarranted dissipation of the revenues of the carriers in general which the Commission is under the duty to conserve. The drastic reductions of rates conceded by the Milwaukee and found by the Commission to be already low were not necessary to enable the Milwaukee to compete for the coal traffic to Rockford, Freeport and the intermediate points and, if permitted to continue in effect, will be followed by general reductions throughout the rate structure. The coal traffic in the Indiana and Illinois territory is of paramount importance to the carriers in this territory in general and particularly to the carriers on whose behalf this brief is filed. It constitutes one of their most important sources of revenue. The Commission was clearly under the duty of that taking the steps to preserve the carrier's revenues and to insure the maintenance of an adequate national transportation system it took in this proceedings. The Commission's findings of fact are adequate to support the order based thereon, and are in turn fully supported by the evidence. The decree of the court below should be reversed.

Respectfully submitted,

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Chicago, Illinois,
Dec. 18, 1934.

APPENDIX.

The Interstate Commerce Act, U. S. C. Title 49, provides:

Sec 1(5)

"(5) All charges made for any service rendered or to be rendered in the transportation of passengers or property or in the transmission of intelligence by wire or wireless as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful: * * *"

Sec. 15(1)

"(1) That whenever, after full hearing, upon a complaint made as provided in section 13 of this Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this Act for the transportation of persons or property or for the transmission of messages as defined in the first section of this Act, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this Act, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and

to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation or transmission other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed."

Sec. 15(7)

"(7) Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation

of property, the Commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a rate, fare, or charge increased after January 1, 1910, or of a rate, fare, or charge sought to be increased after the passage of this Act, the burden of proof to show that the increased rate, fare, or charge, or proposed increased rate, fare, or charge, is just and reasonable shall be upon the carrier, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible."

Sec. 15a(2), as enacted in the Transportation Act of 1920, 41 Stat. L. 488,

"(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: PROVIDED, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable and to prescribe different rates for different sections of the country."

Sec. 15a(2) as amended by the Emergency Transportation Act, 1933, 48 Stat. L. 220,

"(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due

consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service."

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In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 379

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., appellants

v.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, et al.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

OPINIONS BELOW

The opinion of the specially constituted District Court (R. 48) has not been reported.

The two reports of the Interstate Commerce Commission (R. 7, 34) are reported in 197 I. C. C. 245 and 200 I. C. C. 609.

JURISDICTION

The final decree of the District Court was entered June 21, 1934. (R. 56.) Petition for appeal was

filed August 6, 1934, and allowed on the same day. (R. 233, 235.) The jurisdiction of this Court rests upon the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219, 220 (U. S. C., Title 28, Sec. 47) and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (U. S. C., Title 28, Sec. 345). Probable jurisdiction was noted by this Court on October 8, 1934.

QUESTIONS PRESENTED

I. Whether, upon findings supported by evidence that reduced rates stated in schedules proposed by appellee were unreasonably low and would disrupt long-standing rate relationships established by competing carriers from competitive groups of coal mines and would lead to a "rate war" among the carriers and would result in impairment of their revenues and their ability to provide adequate transportation service, in violation of Section 1 (5) and Section 15a (2) of the Act, the Commission proceeding under Sections 15 (1) and 15 (7) of the Act had power to require cancellation of the proposed schedules, without prescribing the rates or the minimum rates to be charged.

II. Whether the Commission's findings in this case constituted a sufficient basis for its order.

III. Whether the evidence before the Commission was sufficient to support its findings and order.

IV. Whether in the proceedings before it the Commission imposed upon appellee the burden of

justifying the reduced rates proposed by it, and, if so, whether such action renders the order void.

STATUTE INVOLVED

The pertinent provisions of the Interstate Commerce Act are printed in the Appendix (*infra*, pp. 64–67).

STATEMENT

This is a direct appeal from the final decree of the specially constituted District Court for the Northern District of Illinois permanently enjoining and restraining enforcement of the order of the Interstate Commerce Commission issued November 8, 1933, by Division 2, in a proceeding entitled "Investigation and Suspension Docket No. 3843, *Coal from Indiana to Illinois*", and affirmed by the entire Commission on April 18, 1934, upon reargument and reconsideration.

The nature of the order: The order required the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, hereinafter called appellee, to cancel certain schedules which it had filed with the Commission proposing to reduce its carload rates applicable to the transportation of bituminous coal from mines on its line in the Brazil-Clinton and Linton-Sullivan origin groups [1] in Indiana, to Rockford

[1] Several mines located in proximity to each other constitute a "group", "origin group", or "rate group." One rate applies on coal transported from all mines constituting one of these groups, and is known as a "group rate." (See R. 150–151, for illustration.)

and Freeport, Illinois, and to certain points intermediate thereto in the latter State.[2] The schedules (R. 60–63) were filed to become effective December 23, 1932. The rate to Rockford and Freeport from the Brazil-Clinton group was $1.87 per ton, and from the Linton-Sullivan group $1.92. Appellee proposed to reduce each of these rates 17 cents, to $1.70 and $1.75, respectively. Reductions ranging from 4 to 10 cents were also proposed in the rates to thirty-six intermediate destination points on appellee's line in Illinois. (R. 43–44.)

Shipping points and rate relationships: The coal mines in the coal producing areas in Indiana and Illinois are divided into several groups from which "group" rates apply. The principal Indiana groups are Brazil-Clinton, Linton-Sullivan, Princeton, and Boonville. (Map, Ex. 5, R. 149.) The principal groups in Illinois are known as the Springfield group and the Southern Illinois group.

Keen competition in the sale of coal at Rockford and Freeport exists between the Indiana groups and the Illinois groups, and, also, between the individual groups in each of these States.

The intrastate rates from the various origin groups in Illinois are definitely related to each other, and are generally in conformity with the

[2] The schedules proposed reductions to 38 destinations, of which Rockford and Freeport are the most important. For purposes of brevity and clarity, Rockford and Freeport are used herein as illustrative unless otherwise indicated.

Commission's findings in *Illinois Coal Cases, 1920,* 62 I. C. C. 741 and 64 I. C. C. 751. The interstate rates from the various Indiana groups are closely related to rates from the Illinois groups and are also definitely related to each other.

Generally speaking, these rate relationships were established by the carriers and not by the Commission, although the Commission did fix a differential of 35 cents over the Southern Illinois group from Western Kentucky to Northern Illinois points in *Illinois-Indiana Coal Cases,* 128 I. C. C. 265, and recently affirmed that differential in *West Kentucky Coal Bureau* v. *Illinois Central R. Co.,* 172 I. C. C. 279. (R. 35.)

The southern Illinois "base group": The principal coal producing area in Illinois is in the southern part of the State, and the Southern Illinois group, one of the several groups in that portion of the State, is considered the "base group" for making rates from Illinois mines and Western Kentucky mines to destinations in Northern Illinois and the Northwest, the rates from other Illinois groups and Western Kentucky groups being based differentially upon those of the Southern Illinois group. (R. 35.) To illustrate, the rate to Rockford from the Southern Illinois or base group is $2.00 per ton, while the rate from the less distant Springfield group is fixed at a 30-cent differential under or less than the rate from the Southern Illinois group rate, or $1.70; and the rate from the

farther distant Western Kentucky group is fixed at a differential of 35 cents over or higher than the rate from the Southern Illinois group, or $2.35.

Illinois-Indiana rate relationships: For many years prior to 1930 coal rates from the Springfield group in Illinois and from the Brazil-Clinton group in Indiana to Rockford, Freeport and other destinations here considered were maintained on a parity. (Ex. 2, R. 144.) The rates to those destinations from the other Indiana groups were and are made differentially over the rates from the Brazil-Clinton group, the rate from the more distant Linton-Sullivan, Princeton, and Boonville groups being 5, 12, and 15 cents higher than rates from the Brazil-Clinton group. (R. 40.)

Order of Illinois Commission: On August 20, 1930, by order of the Illinois Commerce Commission, the intrastate rates from the Southern Illinois and Springfield groups, among others, to the destinations here considered were reduced from $2.17 to $2.00, and from $1.87 to $1.70, respectively, a reduction of 17 cents in each rate, thus destroying the parity that had existed prior to that date between the rates from the Indiana groups and the Illinois groups. Similar reductions were later made in the rates from the Western Kentucky group so as to preserve their relation with the Southern Illinois group. (R. 35–36.)

Prior proceedings under Section 13: After these reductions in the intrastate rates the principal

carriers, including the appellee, operating within Illinois, filed a complaint with the Interstate Commerce Commission, alleging that the reduced intrastate rates were in violation of Section 13 of the Interstate Commerce Act, and asked the Commission to find that those rates were unlawful, would cause an undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce and those in interstate commerce, and would result in unjust discrimination against interstate commerce. (R. 36.)

The evidence in that proceeding made specific comparisons of the intrastate rates from the Illinois groups to Rockford, Freeport and other destinations with the interstate rates from the Indiana mines to the same destinations, including the rates which appellee proposed in the instant proceeding to reduce. Witnesses for appellee and other carriers testified in that case that not only were the intrastate rates too low, but that the interstate rates were lower than reasonable maximum rates. In its decision, *Intrastate Rates on Bituminous Coal between Points in Illinois,* 182 I. C. C. 537, the Commission found that some of the Illinois rates and most of the interstate rates were too low and that the intrastate rates should not be held unlawful under Section 13 of the Act until and unless the interstate rates from the Indiana groups to the same destinations were increased to a level more nearly commensurate with the general level of rates

on coal in that territory. (R. 36, 37.) With respect to the low level of the interstate rates, including those which appellee proposed to reduce in the instant proceeding, the Commission said (R. 36):

> While it is evident that a number of the assailed rates from Illinois groups to Rockford, Freeport, and Dixon are well below the reasonable level of rates in this territory, that appears to be true also of most of the rates from the Indiana groups to the same destinations. For example, the rate from the Brazil-Clinton group to Dixon is only 66.5 percent of the Holmes & Hallowell scale,[3] which is the same percentage of that scale as is reflected by the assailed rate from southern Illinois to Dixon; and the rate from Brazil-Clinton to Freeport is only 67 percent of the scale, as compared with 64 percent from southern Illinois to Freeport and 66 percent from southern Illinois to Rockford. Rates from the more distant Indiana groups to these three destinations range as low as 56 percent of the scale. The Illinois producers urge with much force that their rates to Rockford, Freeport, and Dixon should not be increased so long as such low rates from the Indiana groups to the same destinations are permitted to continue. The principal competition of the Illinois producers at these destinations comes from In-

[3] *Holmes & Hallowell Co.* v. *G. N. Ry. Co.*, 69 I. C. C. 11, 18, in which the Commission prescribed a distance-scale of coal rates, which the Commission and the carriers used in the instant proceeding for purposes of comparison.

> diana, and we find no sufficient justification for requiring any of the Illinois rates to these points to be increased until the low rates from Indiana referred to have been placed upon a level more nearly commensurate with the general level of rates in this territory.

The unusually low level of these rates was again commented upon by the Commission in *Intrastate Rates on Bituminous Coal Within Ohio,* 192 I. C. C. 413.[4] Upon the evidence of record in that case it said (p. 428): "* * * the basis of rates on coal in the Illinois territory is the lowest in the country." (R. 42.)

The Commission's findings in the two cases just mentioned concerning the low level of the rates were confirmed by appellee's own testimony in the instant case. Its coal-traffic manager testified that the rates sought by appellee to be reduced are "less than maximum reasonable rates as are all the rates from Illinois, Indiana, and western Kentucky measured by any test evolved by the Commission in recent years." (R. 74.)

The instant proceeding before the Commission: Disregarding the Commission's findings in those two cases (confirmed by appellee's own testimony in the instant proceeding) and the suggestion made by the Commission in the *Illinois case* that these

[4] The validity of the Commission's order in that case was sustained by the District Court, 6 F. Supp. 386, and by this Court, *State of Ohio* v. *United States*, 292 U. S. 498; and on reargument, No. 868, Oct. Term, 1933.

interstate rates should be increased to a reasonable level, appellee sought, by filing the proposed schedules here involved, to reduce to a still lower level the rates from all mines located on its line in the Brazil-Clinton and Linton-Sullivan groups to Rockford, Freeport and 36 other destinations in Illinois.

Protests were immediately filed by the Illinois Commerce Commission, individual coal operators, coal mining organizations in Illinois, and railroads which compete with appellee in the transportation of coal to the points just mentioned,[5] and the Commission, on December 22, 1932, issued an order (R. 71) pursuant to Section 15 (7) of the Act suspending the proposed rates, instituting an investigation and entering "upon a hearing concerning the lawfulness of rates" stated in the proposed schedules (R. 71).

Report of Division 2: After the hearings were concluded and oral argument was heard by Division 2, upon exceptions to the Examiner's proposed report, the Division rendered its report on November 8, 1933 (R. 7), finding that the proposed sched-

[5] In addition to the Illinois Commerce Commission the protestants were Consolidated Coal Company of St. Louis, Mo., Illinois Coal Traffic Bureau, Springfield, Illinois Coal Traffic Bureau (representing 6 companies which operated 21 mines in the Springfield district), and a number of carriers in Illinois, including Alton Railroad Company, Chicago, Burlington & Quincy Railroad Company, Chicago and Illinois Midland Railway Company, Illinois Central Railroad Company, Missouri Pacific Railroad Company, and Wabash Railway Company. (R. 64–74.)

ules "should not be undertaken in the piecemeal manner here proposed", and had not been justified, and issued its order directing that they be cancelled on or before January 22, 1934. (R. 12.) Responsive to appellee's petition filed January 2, for rehearing, reargument, and reconsideration, and for an extension of the effective date of the order, the Commission postponed the order until February 22, but denied the petition in all other respects. On February 20, the Commission further postponed the order until April 23, 1934.

Reargument and report of the full Commission: On March 7, the Commission reopened the proceeding for argument and reconsideration by the entire Commission. On April 18, 1934, the Commission rendered its report on reconsideration (R. 34) and issued its order (R. 48) affirming the order of Division 2, which required cancellation of the suspended schedules.

Appellee's contentions before the Commission: (1) loss of tonnage: Appellee claimed before the Commission, in support of the proposed reductions, that it had a right to "an equality of opportunity" in the Rockford and Freeport markets for the mines served by it (R. 74), and asserted that the reductions in intrastate rates from Illinois mines in 1930 had deprived it of tonnage which it sought to regain through the reductions in its own rates (R. 38). The Commission found, however, that the record contained no factual basis for

this assertion. Its report states (R. 38), from an exhibit of record, that the volume of coal moved to Rockford in 1931 from all groups in Illinois was 58.4 percent of the volume moved in 1929 (the year prior to the reductions in the Illinois intrastate rates), and from all groups in Indiana 88.7 percent; that the volume moved to Rockford in 1932 from all groups in Illinois was 53.4 percent of that moved in 1929, and from all Indiana groups 87.7 percent, and that (R. 39):

> On the record we are of the opinion that the percentage of the tonnage from the Indiana groups to the destinations herein considered during the period shown had not decreased as a result of the reduced rates from the Illinois groups.

(2) *Relation of rates to distances:* Appellee also contended that the proposed rates were higher, based on distance or length of haul, than the rates from the Springfield group to the destinations involved. To support this claim it computed distances from the Brazil-Clinton and Linton-Sullivan groups over its direct route and only from the mines on its own line, but from the Springfield group it computed the *average* distance from all origins or mines in that group and over all routes. In disapproving this method of computing the lengths of hauls for purposes of comparison, the Commission said (R. 39–40):

> Such a comparison is worthless because like things are not compared. If the short tariff distances from mines on the Illinois Central in the Springfield group were used in comparison with the distance of 231 miles from mines on the Milwaukee in the Brazil-Clinton group, the comparison would favor the Springfield group from which the short tariff distance to Rockford is 199 miles. Such a method of computing distances would tend to destroy all groupings and cannot be adopted.

The Commission pointed out that if the lengths of hauls from the Indiana mines and the Illinois mines, respectively, were properly computed to represent fairly the average of the short tariff route from all origins on all lines in the respective groups of mines, the average distance from the Springfield group to Rockford would be 237.9 miles, and to Freeport 261 miles, while the average distance from the Brazil-Clinton group to Rockford would be 272 miles, and to Freeport 304 miles. (R. 39.)

(3) *Other carriers from the Indiana mine groups:* Appellee urged the Commission to ignore the effect which the proposed reductions would have upon the six other carriers which serve the Brazil-Clinton and Linton-Sullivan groups, and stated that whatever action those competing carriers might take would be immaterial because ap-

proximately 95 per cent of the coal moving from those two groups to Rockford and Freeport moved over appellee's line. In response, the Commission said (R. 40):

> We do not agree with that statement, insofar as it relates to the pertinency of any action which might be taken by the other lines in the group to meet reduced rates established by the Milwaukee. The record indicates that six carriers, in addition to the Milwaukee, serve either one or both of the Brazil-Clinton and Linton-Sullivan groups. The proposal of the Milwaukee, if permitted to become effective, would not only disrupt the long-existing differential relation between the several Indiana groups but it would also have the effect of splitting up the Brazil-Clinton and Linton-Sullivan groups, with lower rates from mines on the Milwaukee in these groups than from mines in the same groups and in the same immediate vicinity on the lines of other competitive carriers.

Commenting further upon the effect of the proposed reductions upon the highly competitive and finely adjusted rate structure and relationship which had existed in the Illinois-Indiana territory for many years, the report continues (R. 40):

> The coal-producing area in Indiana, consisting of several groups, extends southward from the Brazil-Clinton group (the so-called base group) to the Ohio River. The rates from the more-distant southern groups are

based differentially over those from the Brazil-Clinton group. To the destinations here considered the rates from the Linton-Sullivan, Princeton, and Boonville groups are 5, 12, and 15 cents, respectively, higher than the rates from the Brazil-Clinton group. Stated otherwise, rates from the Linton-Sullivan group are 5 cents higher than rates from the Brazil-Clinton Group; rates from the Princeton group are 7 cents higher than rates from the Linton-Sullivan group; and rates from the Boonville group are 3 cents higher than the rates from the Princeton group. This differential relation has been voluntarily established by the carriers, including respondent herein, serving the Indiana groups. The proposed reductions would increase the above differentials of 12 and 15 cents from the Princeton and Boonville groups to 29 and 32 cents, respectively, over the Brazil-Clinton group. On the other hand, if the suspended rates are permitted to become effective, and the present differential of 15 cents over Brazil-Clinton group rate is maintained, the rate from the Boonville group to the destinations here considered would become 15 cents less than the rate from the southern Illinois group, although the distance is approximately 50 miles less from the latter group, thus tending to precipitate further reductions in the Illinois intrastate rates.

Revenue effects: Concerning the ultimate revenue effects of the proposed rates, the Commission

referred to in its findings in the *Illinois case, supra,* that continuation of the 5-cent reduction prescribed by the Illinois Commission in the rates from the Illinois groups to Chicago and a similar reduction in the interstate rates from and to those points, and from the Indiana and Western Kentucky groups would result in a net annual loss to the carriers of more than $600,000.00, and stated (R. 43):

> The record in the instant case shows that certain routes from the southern Illinois group to Rockford operate through Chicago. If the rate from the southern Illinois group to Rockford is reduced a further 17 cents, as in all probability it would be, and which protestants argue would be inevitable, it would result in a rate of $1.83 to Rockford as against a rate 12 cents higher to Chicago, an intermediate point over certain routes. Such a rate could not be maintained to Chicago without fourth-section relief. It would, however, be difficult to justify such relief because Chicago is a much more important market than Rockford, and would at least be entitled to a rate no higher than the rate to Rockford. Based on the coal tonnage to Rockford in 1932 from the Illinois, Indiana, and western Kentucky fields, a 17-cent reduction would result in an annual revenue loss to the carriers approximating $48,600. Should the rate to Chicago be reduced to the level of the rate to Rockford, the net annual revenue loss to the carriers, based upon the tonnage of recent years referred to in the Illinois case, would exceed $1,400,000.

The Commission's conclusion concerning the effect which the proposed reductions would have upon the rate structure (both within and between mine groups and States), upon the revenues of the several competing carriers and their ability to render adequate and efficient railway transportation service, was (R. 44):

> Only the rates from mines on the Milwaukee in the Brazil-Clinton and Linton-Sullivan groups are before us in this proceeding. The immediate effect of the Milwaukee's proposal would be to split those groups, with lower rates from mines on that line than from mines on competing lines in the same groups. As hereinbefore indicated, it was testified by witnesses on behalf of protestants that this condition would not long prevail, as the other carriers in those groups would, for competitive reasons, publish similar reduced rates. Such reductions would destroy the differential relations now existing as between those groups and the other Indiana groups, with the probability of mines and carriers in such other groups seeking similar reductions. The reductions here proposed if permitted to become effective would result in a level of rates from the Indiana groups lower than that which we stated, in the Illinois case, to be well below the reasonable level of rates in this territory, and would probably lead to further reductions in the Illinois intrastate rates with like reductions in the rates from western

> Kentucky for the purpose of preserving the differential basis over the rates from the southern Illinois group prescribed by us, thus needlessly sacrificing the carriers' revenues and impairing their ability to render adequate and efficient railway transportation service.

Dealing with the reasonableness of the proposed rates, the Commission gave consideration to the revenue which appellee would derive from them and compared it with the revenue produced by the intrastate rates from the Springfield group to the same destinations. It pointed out that the average distances from the Springfield group to Rockford and Freeport are 34.1 and 43 miles, respectively, less than the distances from the Brazil-Clinton group, and stated (R. 44):

> Under the proposed rates, the ton-mile revenue from the Brazil-Clinton and Linton-Sullivan groups would be 6.2 and 6 mills, respectively, to Rockford, and 5.5 and 5.3 mills, respectively, to Freeport, as compared with ton-mile revenue of 7.1 to 6.5 mills from the Springfield group to the same respective destinations. As respondent has testified that it considers the rates from Springfield as being lower than reasonable, it is difficult to perceive how it can justify the proposed reduced rates under which the revenue would be still lower than the revenue accruing under the rates from Springfield.

In concluding that the proposed rates were unreasonably low, the Commission stated (R. 44–45):

> In *Coal Trade Assn.* v. *Baltimore & O. R. Co.,* 190 I. C. C. 643, decided January 24, 1933, division 4 prescribed reasonable rates based on distance on bituminous coal, in carloads, from the Brazil-Clinton, Linton-Sullivan, Princeton-Ayrshire, and Boonville groups in Indiana, to destinations in eastern-central Illinois, including such points as Arcola, Champaign, Decatur, Danville, Effingham, Bloomington, and Hoopeston. The basis therein prescribed applies for distances up to and including 300 miles. For 272 and 298 miles the rates are $2.07 and $2.15, respectively, as compared with the rates of $1.70 and $1.75, respectively, proposed by respondent herein for like distances from the Brazil-Clinton and Linton-Sullivan groups, to Rockford. If the rates be extended at the rate of progression shown for the last two 25-mile blocks, they, for 304 and 327 miles, the respective distances from the Brazil-Clinton and Linton-Sullivan groups to Freeport, would be $2.23 and $2.31, as compared with rates of $1.70 and $1.75, respectively, from the Brazil-Clinton and Linton-Sullivan groups to Freeport, proposed by respondent. The rates proposed herein would approximate 82 percent to Rockford and 76 percent to Freeport of the rates prescribed for like distances in the above case. In addition to disrupting the differential relation existing between the several Indiana groups,

> the proposed rates, compared with rates recently prescribed for like distances in this general territory, would be unreasonably low.

Statutory authority and ultimate findings: The Commission then discussed briefly the duties and powers imposed upon it by Sections 1 (5) and 15a (2) of the Act, and, after referring to previous decisions by it and to decisions of this Court construing the latter section in the light of the policy and purpose of Transportation Act, 1920, made the following ultimate findings (R. 46–47):

> We find that the proposed rates, if permitted to become effective, would lead to a disruption of the rate structure on coal in the Indiana and related areas, thus impairing the revenue of the carriers serving those areas and their ability to provide the adequate and efficient transportation service contemplated by section 15a of the act; that they would cause a disruption of the individual groups from which the rates are proposed; and that they would cause a disruption of the long-standing rate relation existing for competitive purposes, between the several Indiana groups.
>
> We find that the proposed rates would be unreasonable and in violation of sections 1 (5) and 15a (2) of the Act.

Court proceeding below: Appellee filed this suit February 21, 1934 (R. 13) to annul and enjoin the order issued November 8, 1933, by Division 2.

Having, on February 20, 1934, further postponed the effective date of that order to April 23, 1934, the Commission on March 7, 1934, reopened the proceedings for reargument before and reconsideration by the entire Commission. (R. 35.) The District Court postponed hearing upon the application for injunction until April 20, 1934 (R. 19, 26, 28), after the entire Commission had concluded its reconsideration of the reopened proceedings and rendered its report and order of April 18, 1934. That report, order and the record before the Commission, consisting of 239 pages of oral testimony and 45 exhibits, were introduced in evidence. (R. 58.) The bill of complaint (the allegations of which were directed against the order of Division 2) was allowed by the court to be treated as a supplemental bill attacking the order of April 18, and the answers of the defendant and intervening defendants to the original bill were treated as answers to the bill as amended (R. 57).[6] The Commission filed an amended answer. (R. 31.)

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[6] The bill named the United States of America as defendant. The Interstate Commerce Commission, Alton Railroad Company, Illinois Central Railroad Company, Chicago & Illinois Midland Railway Company, Chicago, Burlington & Quincy Railroad Company, and Missouri Pacific Railroad Company intervened in support of the order (R. 20–28); and 16 coal mining companies located on appellee's line in Indiana intervened as parties plaintiff. (R. 14.) Summons and Severance was served upon Chicago & Illinois Midland Railway Company, which did not join the defendant and other intervening defendants in this appeal. (R. 235–236.)

At the conclusion of the hearing the court granted an interlocutory injunction restraining enforcement of the Commission's order pending further order of the court (R. 29), and, on June 13, 1934, rendered its opinion (R. 48), findings of fact and conclusions of law (R. 54), and issued its final decree (R. 56) by which it made permanent its interlocutory decree and perpetually enjoined enforcement of the Commission's order.

The District Court held that the evidence did not justify the conclusion that the rates would lead to a disruption of the coal rate structure in Indiana and related areas, and to impairment of the revenues of carriers in those areas and their ability to provide adequate transportation service as contemplated by Section 15a of the Act. (R. 50–52.) It found that the rates proposed by appellee from the Brazil-Clinton and Linton-Sullivan mines to Rockford, Freeport and intermediate destinations "will enable those mines to undersell in the destinations mentioned, coming from mines not so favorably situated, with the result that the Milwaukee [appellee] will derive a greater revenue and the buyers of coal at those destinations will obtain that commodity at a lower price." (R. 52.) Although the record contained no evidence concerning transportation costs incurred by appellee or other carriers of the coal in question, the court said (R. 51):

> There seems to be no question but that the Milwaukee is in a position to serve the mines in the Brazil-Clinton and Linton-Sullivan groups which are on its lines at a much cheaper rate than other carriers whose lines touch coal mines in the same vicinity and more cheaply than the lines in Illinois can carry coal from the northern Illinois and Springfield groups to Rockford and Freeport. . . . .

The court disagreed with the Commission's finding (R. 39) that the percentage of the tonnage from the Indiana groups "had not decreased as a result of the reduced rates from the Illinois groups" and made its own finding (R. 55) that the reduction in volume from the Clinton group to Rockford "was due, in part, to the disparity in rates brought about by the reduced intrastate rates." It held that there was no evidence to show that the proposed rates "were below a reasonable minimum nor that they were noncompensatory" (R. 50), that there was "no evidence that the proposed rates in and of themselves are unreasonable" (R. 51), and that "in the absence of evidence that the proposed rate is not compensatory or below a reasonable minimum there is nothing in section 1 (5) of the act which justifies the Commission in setting it aside." (R. 52.)

The court concluded that there was no evidence to show "that the present rate structure is fair or

that it is reasonable; no evidence that its disruption would necessarily lead to the introduction of unfair or unreasonable rates" (R. 52), that "there is no evidence that the proposed rates of the Milwaukee will interfere with adequate and efficient railway service" (R. 52), and, finally, that "there is nothing in the section [15a] as it now stands authorizing the Commission to establish rates above a reasonable minimum for one railroad merely to enable another railroad in the same group not so well situated, to earn a fair return, even if the act of 1920 did so provide. Nor is there any evidence in the record that the proposed rates of the Milwaukee if allowed to stand will so affect the earning capacity of any other railroad." (R. 53.)

SPECIFICATIONS OF ERROR

The District Court erred:

(1) In holding and deciding that the order of the Interstate Commerce Commission of November 8, 1933, as affirmed by the order of April 18, 1934, is not supported by substantial evidence.

(2) In holding and deciding that there was no substantial evidence in the record to justify a finding by the Interstate Commerce Commission that the rates proposed were unlawful in violation of the Interstate Commerce Act.

(3) In holding that there was no evidence to show that the proposed rates in and of themselves are unreasonable.

(4) In holding and deciding that there was no evidence that the proposed rates of the Milwaukee will interfere with adequate and efficient railway service.

(5) In holding and deciding that there is nothing in Section 15a (2) of the Interstate Commerce Act, as amended by the Emergeney Railroad Transportation Act, 1933, "authorizing the Commission to establish rates above a reasonable minimum for one railroad merely to enable another railroad in the group not so well situated, to earn a fair return, even if the act of 1920 did so provide."

(6) In not holding and deciding that there was substantial evidence in the record to justify a finding by the Interstate Commerce Commission that the rates proposed were unlawful in violation of the Interstate Commerce Act.

(7) In not dismissing the bill of complaint.

SUMMARY OF ARGUMENT

I. Section 15 (1) and (7) empowers the Commission to prevent establishment and require cancellation of schedules proposing interstate rate reductions which are unreasonably low, will lead to further rate reductions and will result in unnecessary impairment of carriers' revenues and their ability to provide adequate transportation service, in violation of Section 15a (2), as amended, regardless of whether, measured by standards used in determining the reasonableness of particular rates

under other provisions of the Act, the proposed rates are compensatory or above the minimum of reasonable rates.

These are associated provisions of the Act enacted for the purpose of preserving carrier income in the interests of adequate and efficient transportation service, and to that end Section 15 (1) must be construed in the light of Section 15a and as supplementing it. This Court has consistently so construed the power granted by Section 13 (4) to require increases in intrastate rates to minima prescribed by the Commission. *United States* v. *Louisiana,* 290 U. S. 70; *New England Divisions Case,* 261 U. S. 184; *Railroad Commission of Wisconsin* v. *C. B. & Q. R. Co.,* 257 U. S. 563; *Dayton-Goose Creek Ry. Co.* v. *United States,* 263 U. S. 456. *A fortiori,* the minimum rate power granted by Section 15 (1) should be so construed, for, as stated in the *Wisconsin case, supra,* interstate rates produce approximately two-thirds of the revenue required to provide adequate transportation service while intrastate rates produce only one-third. The three decisions of district courts, other than the decision below, which have construed the minimum rate power over interstate rates, hold that its exercise is not limited to rates which are non-compensatory or below a reasonable minimum but extends to rate reductions which will disrupt rate structures resulting in "rate wars" and impairment of carriers' revenues. *Jefferson Island Salt*

Mining Co. v. *United States,* 6 F. (2d) 315; *Anchor Coal Co.* v. *United States,* 25 F. (2d) 462; *Youngstown Sheet & Tube Co.* v. *United States,* 7 F. Supp. 33. The Commission itself has consistently construed and applied its minimum interstate rate powers in the light of and as supplementing Section 15a, both before and since that section was amended in 1933. *Container Service,* 173 I. C. C. 377.

The purposes of that section and its pivotal function in the scheme of national control over railroads asserted by Transportation Act, 1920, for national purposes were not changed by the 1933 amendment. *Florida* v. *United States,* 292 U. S. 1.

The order is not void because the Commission did not prescribe minimum rates in lieu of those it required to be cancelled. The purpose of the minimum rate power is not merely to enable the Commission to *prescribe* rates, but also, in conjunction with the suspension power under Section 15 (7), to *prevent* establishment of rates which, measured by the standards and purposes of Section 15a or other provisions of the Act, are too low. Since the statute confers both powers, an exercise of the *preventive* power unaccompanied by exertion of the affirmative power to prescribe rates could not exceed the power granted. Nor is it arbitrary action, for the cancellation does not deny or deprive appellee of the right to establish lawful rates, but merely denies the proposal to estab-

lish rates found to be unlawful, and leaves appellee in its previous position with its existing rates in effect. The order does not require that appellee continue charging the latter rates, nor does it determine whether they are lawful.

Authority to fix maximum rates does not preclude authority to declare unlawful proposed rates as being too high without at the same time fixing maximum rates. See: *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States,* 279 U. S. 768. There would appear to be no reason why the similar power to fix minimum rates should exclude the power to declare proposed rates unlawful as too low without fixing minimum rates.

II. The Commission made sufficient findings to support its order. The report contains all basic findings and ultimate conclusions of fact necessary to meet the requirements stated in decisions of this Court (*Manufacturers Ry. Co.* v. *United States,* 246 U. S. 457; *United States* v. *Louisiana,* 290 U. S. 70; *Beaumont, Sour Lake & Western Ry. Co.* v. *United States,* 282 U. S. 74; *Florida* v. *United States,* 282 U. S. 194), and are sufficient to enable the Court to determine whether there is "a rational basis for the conclusions approved by the administrative body." *Mississippi Valley Barge Line Company* v. *United States,* 292 U. S. 282, 287.

III. The evidence adequately supports the Commission's findings and order. The record discloses that the present case is substantially a continuation of constantly recurring rate controversies be-

fore the Commission due to the intense competition between coal operators in the Indiana, Illinois, and Western Kentucky areas and the carriers serving them, thus giving the Commission a background of experience and intimate knowledge of the competitive rate and transportation circumstances presented by this case. The instant record contains all pertinent facts concerning the competition between the mines and the carriers, comparisons of rates and distances, and the movement of tonnage to markets. It contains a history of both the interstate and intrastate rates since 1910 from the Indiana and Illinois mines to Rockford and Freeport.

The Commission had recently found in other proceedings that the general level of all the coal rates in the Indiana-Illinois territory was the lowest in the country, and appellee's own testimony in the instant case showed that the rates were too low. (The proposed rates would also reestablish a rate advantage which the Commission found that the Indiana mines had before the Illinois intrastate rates were reduced in 1930.) That the proposed rates were too low is shown by comparison with other rates in the same territory, including rates recently prescribed as reasonable by the Commission.

That the proposed rates would disrupt the long-standing differential relationship existing between the Indiana mining groups and between Indiana mines and Illinois mines was clearly demonstrated

in the testimony of witnesses and is obvious from the past history of the highly competitive conditions disclosed in previous cases before the Commission.

The proposed reductions would ultimately result in impairing the revenues of carriers by more than $1,400,000 annually, thus weakening their ability to provide adequate transportation service.

IV. The record and report show that the Commission did not impose upon appellee the burden of proving that the proposed rates were lawful. The Commission's report clearly shows that cancellation of the proposed rates was required not merely because appellee's evidence was insufficient, but because all the evidence of record showed that they are unlawful. *State of Ohio* v. *United States,* 6 F. Supp. 386, 388.

ARGUMENT

I

UPON FINDINGS SUPPORTED BY EVIDENCE THAT RATES STATED IN PROPOSED SCHEDULES ARE UNREASONABLY LOW, WILL LEAD TO FURTHER RATE REDUCTIONS AND WILL RESULT IN UNNECESSARY IMPAIRMENT OF CARRIERS' REVENUES AND THEIR ABILITY TO PROVIDE ADEQUATE AND EFFICIENT TRANSPORTATION SERVICE, THE COMMISSION HAS POWER TO REQUIRE CANCELLATION OF THE SCHEDULES

The decision of the District Court rests upon the view that the Commission has no power to prevent carriers from reducing interstate rates unless the rates proposed are shown to be non-compensatory

or below a reasonable minimum, and that, in the absence of such showing, the Act does not authorize interference with rate reductions even though such reductions will result in unnecessary impairment of the carriers' revenues and their ability to provide adequate and efficient transportation service contemplated by Section 15a of the Act.

The Commission's power "to determine and prescribe what will be the just and reasonable individual or joint rate, * * * or minimum * * * to be charged" and to make an order that the carrier shall not publish or collect "less than the minimum so prescribed", was added to Section 15 of the Act by Transportation Act, 1920.[7] Congress had already conferred the power to fix maximum rates and had, in 1910, empowered the Commission to prevent, by suspension pending investigation and hearing, any proposed rate from becoming effective and to require cancellation of the proffered tariffs upon a finding that the rate proposed would be unlawful. (Section 15 (7).) But the common

[7] Prior to that Act, the Commission had no power to prescribe minimum rates. *Skinner & Eddy Corp.* v. *United States*, 249 U. S. 557, 564, 565. The original Act conferred no power to fix any rate for the future. *Cin. N. O. and Tex. Pac. Railway* v. *Int. Com. Com.*, 162 U. S. 184, 196; *Interstate Com. Commission* v. *Railway Co.*, 167 U. S. 479, 511. The Act of 1906 (c. 3591, 34 Stat. 589) conferred the power to fix maximum rates. The Act of 1910 (c. 309, 36 Stat. 551) empowered the Commission to suspend, during investigation, tariffs proposing new rates, and placed upon the carrier the burden of proof to establish the reasonableness of increased rates.

law did not recognize that the rate of a common carrier might be so low as to constitute a wrong, and, prior to 1920, Congress had declined to declare such a rule. Until that year railroads were free to reduce their rates as they chose, without direct interference by the Commission, even though the result was the establishment of unreasonably low or unremunerative rates. *Skinner & Eddy Corp.* v. *United States,* 249 U. S. 557, 565.

The new railroad policy introduced into Federal legislation by the 1920 Act—the new purpose of Congress to ensure adequate railroad transportation service [8]—and the wide range of the new pow-

[8] In the *Dayton-Goose Creek* case, *supra*, the Court said (p. 478):

"* * * the Transportation Act adds a new and important object to previous interstate commerce legislation, which was designed primarily to prevent unreasonable or discriminatory rates against persons and localities. The new act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give the owners of the railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden. To achieve this great purpose, it puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the Commission, which is to supervise their issue of securities, their car supply and distribution, their joint use of terminals, their construction of new lines, their abandonment of old lines, and by a proper division of joint rates, and by fixing adequate rates for interstate commerce, and in case of discrimination, for intrastate commerce, to secure a fair return upon the properties of the carriers engaged."

ers conferred and new duties imposed to achieve the purposes of the Act have been explained by this Court in familiar decisions. *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563; *New England Divisions Case*, 261 U. S. 184; *Dayton-Goose Creek Ry. Co.* v. *United States*, 263 U. S. 456; *United States* v. *Louisiana*, 290 U. S. 70.

Among the several means devised to provide revenue needed for maintenance of adequate transportation service, the power to prescribe minimum rates, interstate and intrastate, was not the least important. Without that power the Commission was helpless to prevent the nullification of its efforts, pursuant to Section 15a, to establish rates so that carriers as a whole (or in such rate groups as the Commission may designate) will, under efficient management, earn a net railway operating income equal, as nearly as may be, to a fair return upon the value of their railway operating property. Its importance in the scheme of the 1920 Act is demonstrated in the *Wisconsin case, supra*, where the Court points out (p. 566) that, if the carriers were compelled to charge the 2-cent passenger fare prescribed by the Wisconsin statute, instead of the 3.6-cent fare found reasonable by the Commission, they would lose $6,000,000 annually.

The Commission had for more than thirty years recommended to Congress that it be empowered to limit minimum rates to competitive points and

thus to stabilize rates and protect the interests and rights of the general public as well as the carriers.[9] That the power was conferred to accomplish the purposes for which the Commission's experience had demonstrated that it was needed is made clear

[9] In its Second (1888) and its Fourth (1890) Annual Reports the Commission pointed to the ultimate injury to both carriers and the public from low rates impelled by competition, and in its Seventh Annual Report (1893) it said (pp. 38–39):

"The Act confers upon the Commission the power to reduce a rate that is unreasonably high, but not to raise a rate that is unreasonably low. Experience has fully satisfied us that this is a defect in the statute * * * the power to limit minimum rates to competitive points would tend strongly to promote stable rates.

We can anticipate no opposition to such legislation, as its purpose and effect would be the protection of the interests and rights of the general public, as well as carriers, and without possible injury to the latter, and it is believed it would render the administration of the law easier and more successful."

Similar statements are contained in its Eighth, Eleventh and Twelfth reports (1894, 1897 and 1898), and in its Thirty-Third Annual Report, submitted December 1, 1919, while the Congress had under consideration the new legislative policies and the new powers and duties which were incorporated in Transportation Act, 1920, the Commission said (p. 4):

"The regulating tribunal should have authority to prescribe not only the maximum which the carrier may charge, but also the minimum. This power would restrain an individual carrier from furthering its own ends at the expense of others by unwise and unwarranted upsetting of reasonable rate adjustments. If the rates and charges are by regulation confined within the reasonably narrow limits between the maximum and minimum reasonable charges, no public interest can be injured by the carriers all maintaining charges within those limits."

in decisions of this Court. In the *Wisconsin case, supra,* the Court said (p. 585–586) that the power granted by the 1920 Act to require increases in intrastate rates to minima prescribed by the Commission was one of the means by which Congress sought to accomplish the purpose, expressly declared in Section 15a, to maintain an adequate railway service, and that it was "impossible to escape the dovetail relation between that provision [Section 13 (4)] and the purpose of § 15a." (See also *United States* v. *Louisiana, supra,* pp. 74–75.) And, in the *New England Divisions Case, supra,* p. 190, note, the Court said that another means to that end was the power conferred "to fix minimum, as well as maximum, rates; and thus prevent cut-throat competition and the taking away of traffic from weaker competitors." This power to fix minimum rates "to preclude the absorption of traffic of weaker competitors by cut-throat competition" was said by the Court, in *United States* v. *Louisiana, supra,* p. 74, to be one of the associated provisions of the 1920 Act "calculated to preserve carrier income in the interests of an efficient transportation service." In *United States* v. *Illinois Central R. R. Co.,* 263 U. S. 515, the Court stated (p. 525) that since the Transportation Act, 1920, "the interests of the individual carrier must yield in many respects to the public need" and that "the newly conferred power to grant relief against rates unreasonably low may afford protection against injurious rate-policies of a competitor, which were

theretofore uncontrollable." See also *Texas & Pacific Ry. Co.* v. *G. C. & S. F. Ry. Co.*, 270 U. S. 266, 277.

The three decisions of district courts, other than the decision below, which have dealt with the minimum rate power over interstate rates hold that the exercise of the power is not limited to rates which are non-compensatory or below a reasonable minimum, but extends to rate reductions which will disrupt rate structures resulting in "rate wars" and impairment of carriers' revenues. In *Jefferson Island Salt Mining Co.* v. *United States*, 6 F. (2d) 315 (N. D. Ohio, 1925), the court, in sustaining an order of the Commission which required increases in rates on salt to Chicago from mines in Louisiana to a minimum prescribed by the Commission, rejected as being too restricted a view of the Commission's minimum rate powers the contention of the carriers that the Commission was empowered to increase a rate only when shown to be non-compensatory, unreasonably low from the carriers' viewpoint, or prejudicial or discriminatory. It said (p. 319) that:

> It was not necessary that the Commission should first have found that the Detroit to Chicago rate, or the Louisiana to Chicago rate, was noncompensatory, in order that a higher minimum rate might be prescribed, if in fact, as the Commission was justified in finding, proper rate relationships between different carriers and localities could not otherwise be established, or ruinous rate

> wars, threatening the ability of the Commission to fix rates for the carriers as a whole or in groups, which would permit the earnings prescribed in section 15a, could not otherwise be avoided.

See to the same effect *Anchor Coal Co.* v. *United States,* 25 F. (2d) 462, 471[10] (S. D. W. Va., 1928); *Youngstown Sheet & Tube Co.* v. *United States,* 7 F. Supp. 33 (N. D. Ohio, 1934).

The refusal of the court below to construe the minimum rate power conferred over interstate rates by Section 15 (1) in the light of Section 15a rested upon its erroneous view that Section 15a (2), as originally enacted "was very considerably changed by the amendment of 1933." (R. 53.) That the purposes of the latter section were not changed by the 1933 amendment is made clear by this Court's decision in *Florida* v. *United States,* 292 U. S. 1, holding (p. 8) that:

> The new Act discloses no intention to weaken national control for essential national purposes over the railway system of the country. It was rather designed to aid that control in the light of the depressed economic condition of the railways.

[10] In that case the District Court enjoined the Commission's order in *Lake Cargo Coal,* 139 I. C. C. 367, requiring cancellation of reduced rates. This Court reversed the District Court on the ground that the case was moot. *United States* v. *Anchor Coal Co.,* 279 U. S. 812.

If the 1933 amendment was designed to aid rather than weaken national control over intrastate rates for essential national purposes, *a fortiori* it was designed to aid rather than weaken control over interstate rates, for, as observed in the *Wisconsin case, supra,* two-thirds of the revenue necessary to provide adequate transportation service is derived from interstate traffic, while intrastate traffic produces only one-third. It is submitted that the Commission's powers to prescribe minimum interstate rates under Section 15 (1) must be construed in the light of the amended Section 15a and the District Court clearly erred in refusing so to construe it.

The Commission itself, as shown by its report in the instant case (R. 45–46), has consistently construed and applied its minimum rate powers in the light of its duties under, and the purposes of, Section 15a, both before and since the latter section was amended in 1933, to proposed reductions in interstate rates even though such rates have not been shown to be non-compensatory.[11]

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[11] In *Container Service*, 173 I. C. C. 377, the Commission (p. 430) said:

"* * * we have repeatedly refused to find proposed reductions in rates justified when it was shown that they would be harmful to the rate structure as a whole, or as applied to a particular commodity, or otherwise not in harmony with section 15a. *Trunk Line and Ex-Lake Iron Ore Rates*, 69 I. C. C. 589, 610, 611; *Import and Domestic Rates on Vegetable Oils*, 78 I. C. C. 421; *Grain and Grain Products from Kansas and Missouri to Gulf Ports*, 115 I. C. C. 153,

In the court below appellee relied upon *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627, to support the contention that the Commission's minimum rate power may be exerted only when the proposed rates are not compensatory or will cast a burden on other traffic. There the parties agreed "that authority for the order must be found in § 3 (1)" (p. 633). That case is clearly inapposite for the reason that there was involved only the question whether the rates to New Orleans unduly prejudiced the Texas ports in violation of Section 3 (1) of the Act. There was not involved the reasonableness of the rates under Section 1, or the question whether the rates in controversy violated or thwarted the purposes of Section 15a (2).

The Order Is Not Void Because the Commission Did Not Prescribe Minimum Rates in Lieu of the Rates Required to be Cancelled

Appellee argued in the court below that, while the Commission clearly has power to require cancellation of proposed reduced rates if found upon adequate evidence to be in violation of the Act, it may not require that proposed rates be cancelled without, at the same time, prescribing the mini-

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164; *Grain and Grain Products to Eastern Points*, 122 I. C. C. 551, 563, 564; *Lake Cargo Coal*, *supra*; *Salt from Louisiana Mines to Chicago*, 66 I. C. C. 81; *Reduced Rates on Coal to Kansas City*, 66 I. C. C. 457; *Coal from Wyoming Mines*, 68 I. C. C. 254; *Coal from Southwest to Omaha*, 73 I. C. C. 536; *Transcontinental Cases of 1922*, 74 I. C. C. 48; *Canned Goods from Pacific Coast*, 132 I. C. C. 520; *Cement from Linwood*, 140 I. C. C. 579, 582; * * *."

mum rate to be charged. The opinion of the District Court ignores the contention.

The minimum rate power, in conjunction with the suspension power granted by Section 15 (7), is essentially *preventive* in character, the purpose being not merely to enable the Commission to prescribe the minimum rates to be charged, but also to prevent carriers from establishing rates which, measured by the standards and purposes of the Act as enlarged in 1920, are too low. To accomplish the latter purpose mere cancellation of the proposed rates is all that need be done. Whether the Commission prescribes rates in lieu of those it requires to be suspended and cancelled depends upon the pleadings, issues, record and the practical situation before it.

In most cases cancellation of proposed rates leaves in effect rates already on file. So, in the instant case, rates on coal from the same points of origin to the same destinations and over the same route have long been in effect. Appellee's proposed tariffs sought merely to reduce some of these rates. The suspension of the proposed reductions left the old rates effective and available to appellee and its shippers, for the Commission's suspension order expressly required "that the rates and charges * * * sought to be altered shall not be changed by any subsequent tariff or schedule, until this investigation and suspension proceeding has been disposed of or until the period of suspen-

sion and any extension thereof has expired." (R. 72.) The suspension order, approximating the language of Section 15 (7), further provided that the Commission enter upon a hearing "concerning the lawfulness of rates, charges, regulations, and practices stated in the said schedules." The issue was whether the proposed rates were themselves lawful within the standards set up by the Act, and not whether some other rate, or what particular minimum rate, would be lawful. There was therefore no occasion, upon the face of the pleadings instituting the investigation, for the Commission to prescribe the minimum rate to be charged, nor was there a practical situation which required more than mere cancellation of the proposed rates.

Nothing in the Act requires the Commission to prescribe other rates in lieu of those it finds to be unlawful and requires to be cancelled. In *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States,* 279 U. S. 768, this Court approved an order of the Commission which merely required cancellation of schedules proposing increased grain rates, and did not prescribe the maximum rates to be charged. The Court said (p. 776):

> In ordering cancellation of the proposed tariff the Commission exercised only its function of determining the reasonableness of rates.

If appellee's contention is sound, the order sustained in that case was unlawful merely because

the Commission did not accompany its requirement that the proposed tariffs be cancelled with a further requirement that a particular rate be established.

It is submitted that the grant of authority to prescribe minimum rates, in the amendments to Section 15 (1) made by the Transportation Act, 1920, read in conjunction with the duty imposed at the same time upon the Commission by Section 15a (2) to "establish or adjust . . . rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will . . . earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers", has the effect of bringing rates which are unreasonably low within the provisions of Section 1 (5), which declares unlawful "every unjust and unreasonable" rate. Section 15a (2), as amended in 1933 (c. 91, 48 Stat. 220), recognizes this state of the law even more forcefully in providing that "in the exercise of its power to prescribe just and reasonable rates" the Commission shall give due consideration, among other factors, "to the need, in the public interest, of adequate and efficient railway transportation service * * *; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service." And, it is further submitted, the Commission within this au-

thority may declare proposed rates unlawful as unreasonably low without at the same time fixing minimum rates, just as it may declare proposed rates unlawful as too high without at the same time fixing maximum rates.

II

THE FINDINGS MADE BY THE COMMISSION ADEQUATELY SUPPORT THE ORDER

The bill of complaint alleges (R. 5, 6), and appellee contended in the District Court, that the Commission's report does not contain findings necessary to support its order. That court did not decide whether the findings made were sufficient.

The only requirement of the Act concerning the nature of the report and findings to be made by the Commission is found in Section 14 (1), which declares that after the Commission makes an investigation "it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made." This Court said in *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457, 489–490, that the Hepburn Act, 1906, modified Section 14 "so as to dispense with the necessity of formal findings of fact except in cases where damages (or reparation) are awarded * * *." The necessity of a spe-

cific report of the facts and "complete statements by the Commission showing the grounds upon which its determinations rest" was declared by this Court in *Beaumont, Sour Lake & Western Ry. Co.* v. *United States,* 282 U. S. 74, 86. And in *Florida* v. *United States,* 282 U. S. 194, 215, the Court set aside an order of the Commission which required increases in intrastate rates because "of the lack of the basic or essential findings required" to support the order.

Among the basic findings of fact contained in the Commission's report are the following:

(1) Keen competition exists between the Indiana and the Illinois mines and between the individual groups of mines in each of these States in the sale of coal at Rockford, Freeport and other destinations here involved; the rates from the various origin groups are definitely related to each other, and the rates from Indiana groups are closely related (R. 35);

(2) Prior to August 20, 1930, producers in the Indiana groups had an advantage over their Illinois competitors at the destinations here considered, which the proposed reduced rates from Indiana groups would reestablish (R. 37);

(3) All of the existing rates from Illinois, Indiana and Western Kentucky to the destinations here considered are less than reasonable maxima (R. 37);

(4) The decrease in volume of coal tonnage from Indiana mines to these destinations for the two-year period, 1931 and 1932, after the intrastate rates in Illinois were reduced, was less than the decrease in the movement from the Illinois mines to the same destination in the same period (R. 38, 39);

(5) Based upon a comparison of the length of hauls, properly computed, the interstate rates from Indiana groups were lower than intrastate rates from Illinois groups to the destinations under consideration, and were lower in comparison with the schedule of reasonable rates prescribed by the Commission in other cases (R. 36);

(6) Six carriers in addition to appellee serve either or both of the same mine groups from which appellee proposes to reduce its rates, and, if permitted to become effective, the reductions proposed from those groups by appellee would not only disrupt the long-existing differential relation between the several Indiana groups, but would also have the effect of splitting up the groups served by appellee, and would result in lower rates from mines on appellee's line in these groups than from mines in the same groups and in the same immediate vicinity on the lines of other competing carriers (R. 40);

(7) If the proposed reduced rates are permitted to become effective similar reductions will be made, for competitive reasons, by other carriers in the

same groups, and reductions will be sought also from the more distant Southern Indiana groups (R. 41);

(8) Retaliatory reductions in Indiana rates and in Illinois intrastate rates would inevitably follow appellee's proposed reductions and result in annual revenue losses of $1,400,000.00 (R. 43):

(9) The immediate effect of the proposed reductions would be to give mines on appellee's line lower rates to the destinations here considered than rates from mines on competing lines in the same groups, but this condition would not long prevail, as the other carriers in those groups would, for competitive reasons, publish similar reduced rates, and such reductions would destroy the differential relations now existing as between those groups and the other Indiana groups (R. 40):

(10) The reductions proposed by appellee would result in a level of rates from the Indiana groups lower than that which the Commission stated in the *Illinois case, supra,* was well below the reasonable level of rates in this territory, and would probably lead to further reductions in the Illinois intrastate rates, with like reductions in the rates from Western Kentucky for the purpose of preserving the differential bases over the rates from the Southern Illinois group prescribed by the Commission, thus needlessly sacrificing the carriers' revenues and impairing their ability to render adequate and

efficient railway transportation service (R. 44); and

(11) The proposed rates, "compared with rates recently prescribed for like distances in this general territory, would be unreasonably low" (R. 45).

Upon these and other basic facts set forth in the report from the evidence of record the Commission reached the following conclusion (R. 46–47):

> We find that the proposed rates, if permitted to become effective, would lead to a disruption of the rate structure on coal in the Indiana and related areas, thus impairing the revenue of the carriers serving those areas and their ability to provide the adequate and efficient transportation service contemplated by section 15a of the act; that they would cause a disruption of the individual groups from which the rates are proposed, and that they would cause a disruption of the long-standing rate relation existing for competitive purposes, between the several Indiana groups.
>
> We find that the proposed rates would be unreasonable and in violation of sections 1 (5) and 15a (2) of the act.

Appellee has not indicated what findings in addition to those contained in the report of the Commission are required to support its order. It is submitted that the findings made are quite sufficient to enable the Court to determine whether there is "a rational basis for the conclusions ap-

proved by the administrative body" (*Mississippi Valley Barge Line Co.* v. *United States*, 292 U. S. 282, 287), are as full and complete as were the findings held sufficient in *United States* v. *Louisiana*, *supra*, p. 80, and *Florida* v. *United States*, 292 U. S. 1, and constitute an adequate basis for the order.

III

THE EVIDENCE BEFORE THE COMMISSION ADEQUATELY SUPPORTS ITS FINDINGS AND ORDER

Resting its decision upon the legal theory that the Commission could exert its minimum rate-making power only to prevent establishment of such rates as it found to be "not compensatory or below a reasonable minimum" (R. 52) and that this limitation upon the use of the power is not removed by Section 15a (2), as amended (R. 53), the District Court held that there was no evidence whatever before the Commission to show that the proposed rates were not compensatory or below a reasonable minimum, and no evidence that the rates would violate any provision of the Act. The only evidence discussed in the opinion is that of one witness, who testified that if the proposed rates became effective other carriers would promptly make similar reductions in their own rates, and the court concluded that this witness' testimony was not entitled "to much weight as evidence" (R. 51).

The intense competition between the coal operators in this territory and between the several car-

riers serving them has brought before the Commission many times litigation involving these rates, with the result that the Commission approached the instant proceeding with an intimate knowledge of the important facts concerning competition, transportation conditions affecting both the carriers and the rates, the finely balanced differential relationships between the various groups in each State, and the long-standing relationships between the groups of mines in the respective States. *Illinois Coal Cases 1920, supra; Illinois-Indiana Coal Cases,* 128 I. C. C. 265; *West Kentucky Coal Bureau* v. *Illinois Central R. Co.,* 172 I. C. C. 279; Coal Trade Assn. of *Indiana* v. *Baltimore & O. R. Co.,* 185 I. C. C. 225, 190 I. C. C. 643; *Intrastate Rates on Bituminous Coal in Illinois;* 182 I. C. C. 537.

The last cited case, known as the *Illinois case,* was brought by the carriers, including appellee, serving Illinois, and their complaint alleged that the intrastate rates from the Southern Illinois and Springfield groups to Rockford and Freeport, after the reductions in 1930, would cause undue advantage, preference and prejudice between persons and localities in intrastate commerce and those in interstate commerce, and unjust discrimination against interstate commerce. (R. 36.) Specific comparisons were made of the reduced Illinois rates to Rockford, Freeport and other destinations with interstate rates in Indiana groups to the same destinations. The Commission found that not

only were some of the intrastate rates too low, but also that most of the interstate rates from Indiana were so far below the general level of rates in that territory that it was not justified in increasing the intrastate rates "until the low rates from Indiana referred to have been placed upon a level more nearly commensurate with the general level of rates in this territory." (R. 36.)

The report of the Commission in the instant case states further (R. 37):

> In view of our finding in the *Illinois* case, it is obvious that prior to August 20, 1930, producers in the Indiana groups had an advantage over their Illinois competitors at the destinations here considered which the proposed reduced rates from the Indiana groups would reestablish.

In rejecting the low rates in the Illinois-Indiana area for purposes of comparison with other rates, the Commission had said in *Intrastate Rates on Bituminous Coal Within Ohio,* 192 I. C. C. 413, 428 that:

> It is generally conceded that the basis of rates on coal in the Illinois territory is the lowest in the country. This has greatly been brought about by a competitive condition differing from that in the Ohio territory, although some testimony was introduced to indicate that the actual operating conditions in Illinois are not more favorable than in Ohio. Chicago, in the Illinois territory, is the greatest coal market in this country, and,

> as stated in *Intrastate Rates on Bituminous Coal in Illinois, supra,* consumes annually 30,000,000 to 35,000,000 tons of coal. It was also there stated that the rate level to Chicago is the result of keen competition between producers of eastern coal, moved both by rail and water-and-rail, and producers of Illinois and Indiana coals. Like competition also exists between carriers that have their own rails extending from particular groups in Illinois and Indiana to Chicago and whose principal interest is to move coal from their own mines. The rates to Chicago have had a depressing effect upon other rates on bituminous coal in this territory and have resulted in the establishment many years ago of a competitive basis of rates that is on a very low level.

Appellee's own witness testified in the instant case that the rates of $1.87 and $1.92 from the Brazil-Clinton and Linton-Sullivan groups to Rockford and Freeport, respectively, "are less than reasonable maximum rates as are all the rates from Illinois, Indiana, and western Kentucky." (R. 74.)

After determining that average distances should be used [12] and that it could not take account merely

[12] In its attempt to prove that the proposed rates were reasonable as compared with rates from the Springfield group, appellee, computing distances only from the mines on its own line in the Indiana groups, used *average* distances from all mines in the Springfield group. So computed, the lengths of its own hauls reflected a totally inaccurate portrayal of distances from the Indiana groups and made these

of the tonnage and rates to mines on appellee's line,[13] the Commission made rate comparisons, examined the effects of reduced Illinois rates upon

distances valueless for purposes of comparison. Witness Waffle testified that distances from one or more mines in a group should not be computed on the length of haul of the one railroad serving a particular mine, but "should absolutely be the average of the entire group of all of the railroads serving that group." (R. 106.) The exhibits of all witnesses, other than appellee's, computed distances for comparative purposes upon the average of all mines within a particular group. (Exs. 8–10, 27–29, 34–35, 39–41.) Appellee's comparison of distances from the mines located only on its line in these groups with the average distances from all mines in the Springfield group favored it in the rate comparisons, but the Commission rejected the method of comparison. (R. 39–40.)

While it would have been within the Commission's power to reject appellee's method of computing distances simply because in its own judgment they were erroneous (*Georgia Public Service Commission* v. *United States*, 283 U. S. 765). the testimony submitted by all other witnesses was in accord with the Commission's view that distances so computed should not be used.

[13] Appellee urged that it transported 95 percent of the coal moving from Brazil-Clinton and Linton-Sullivan groups to Rockford and Freeport, and that therefore whether other carriers serving those two groups reduced their own rates to meet its proposed reductions was immaterial. The Commission disagreed. It pointed out that six carriers in addition to appellee serve either one or both of those groups and that witnesses representing those carriers had testified that if the proposed reductions were permitted to become effective the competing carriers would make similar reductions in the rates from those groups and from the more distant southern Indiana groups. Its report demonstrates the effect of the proposed rates in disrupting the long-existing differential relation between the several Indiana groups and in splitting the Brazil-Clinton and Linton-Sullivan groups. (R. 40.)

tonnage from Indiana mines, inquired into the effect of the proposed rates upon the rate structure in this whole territory, and calculated the effects upon carriers' revenues. These comparisons and conclusions are both reasonable and supported by the evidence. The sufficiency of the evidence will be discussed under the two general findings made by the Commission, first, that the proposed rates were unreasonably low, and, second, that the proposed rates would result in impairment of carriers' revenues and their ability to provide adequate transportation service.

A. The Evidence Amply Supports the Finding That the Proposed Rates Are Unreasonably Low

Rate comparisons: Bearing upon the level of the proposed reductions, the record contains comparisons thereof with rates from Southern Illinois groups to Rockford, Freeport and intermediate destinations, and similar comparisons with rates from Central Illinois and comparisons of distances over various routes of the several competing carriers serving the two groups. (Exs. 13–21, R. 163–170.) Upon this statistical information the Commission was able to make definite comparisons of the earnings produced by the proposed rates and rates from the Illinois groups. It pointed out that to Rockford and Freeport the average distances from the Springfield group are 34.1 and 43 miles, respectively, less than average distances from the Brazil-Clinton group, but that, nevertheless, the

ton-mile revenue under the proposed rates from the Brazil-Clinton and Linton-Sullivan groups would be 6.2 and 6 mills, respectively, to Rockford and 5.5 and 5.3 mills, respectively, to Freeport, as compared with ton-mile revenue of 7.1 and 6.5 mills from the Springfield group to the same respective destinations, and concluded that "as respondent has testified that it considers the rates from Springfield as being lower than reasonable, it is difficult to perceive how it can justify the proposed rates under which the revenue would be still lower than the revenue accruing under the rates from Springfield." (R. 44.)

Further comparison of the proposed rates was made with rates prescribed as reasonable by the Commission in *Coal Trade Assn. of Indiana* v. *Baltimore & O. R. Co., supra,* on coal from the same Indiana groups to destinations in Illinois. This comparison indicated that the proposed rates were 82 percent to Rockford and 76 percent to Freeport of the reasonable rates there prescribed. (R. 45.) Upon the basis of reasonable rates there prescribed by the Commission, the rates to Rockford and Freeport would be $2.23 and $2.31, as compared with the proposed rates of $1.70 and $1.75. After making these comparisons, the Commission concluded that "the proposed rates, compared with rates recently prescribed for like distances in this general territory, would be unreasonably low." (R. 45.)

This evidence was sufficient to justify the Commission in reaching the conclusion that the proposed rates were unreasonably low, measured by standards ordinarily and customarily applied in cases involving the reasonableness of rates. In *Louisville & Nashville R. Co.* v. *United States,* 238 U. S. 1, this Court explained (pp. 15–16) that mere comparison with other rates, some of which had, as in this case, been established by the Commission, was sufficient in order to test the reasonableness of the rate under consideration, and referred to its decision in *Int. Com. Comm.* v. *Louis. & Nash. R. R.,* 227 U. S. 88, which held that the value of comparisons with other rates varies according to the circumstances, but that "the weight to be given it is peculiarly for the body experienced in such matters and familiar with the complexities, intricacies and history of rate-making in each section of the country."

B. The Evidence Compels the Conclusion Reached by the Commission that the Proposed Rates Would Result in Ultimate Impairment of Carriers' Revenues and Ability to Provide Adequate Transportation Service

Appellee's tonnage: Appellee contended before the Commission that while all rates in the Indiana-Illinois territory were less than reasonable rates, it nevertheless was entitled to further reductions in order to secure an equal opportunity for the mines it served in the Rockford and Freeport markets. As a basis for this contention, appellee claimed that a decrease in its coal tonnage had

resulted because of the reductions in intrastate rates by the Illinois Commerce Commission.

However, the evidence shows (Exs. 43 and 44, R. 217–219), and the Commission found, that the tonnage from the Indiana mines had decreased less than the tonnage from the Illinois mines since the intrastate rates were reduced in 1930. (R. 38–39.) The Commission's report so clearly portrays the facts of record that it is set forth here at length:

> An exhibit, as corrected at the argument, introduced by the Illinois Central Railroad Company, protestant, indicates that the volume of coal moved to Rockford in 1932 from the southern Illinois group was 42.7 percent of that moved in 1929, from the Springfield group 245 percent, from the Brazil-Clinton group 39.6 percent, and from the Linton-Sullivan group 88.1 percent, from all groups in Illinois 53.4 percent, and from all groups in Indiana 87.7 percent. The same exhibit indicates that the volume of coal moved to Rockford in 1931 from the southern Illinois group was 54.3 percent of that moved in 1929, from the Springfield group 187.7 percent, from the Brazil-Clinton group 58.4 percent, from the Linton-Sullivan group 42.5 percent, from all groups in Illinois 58.4 percent, and from all groups in Indiana 88.7 percent. The carrier used 1929 for this comparison because that was the first full year prior to the reductions in the Illinois intrastate rates. The increase in the tonnage of coal from the Springfield group to

> Rockford during 1931 and 1932 over the tonnage shipped in 1929 resulted from the distribution of coal for relief purposes at Rockford, which coal was purchased at mines in the Springfield group because of the low prices prevailing in that group. This exhibit was introduced for the purpose of showing that, with the exception of the coal shipped from the Springfield group to Rockford for relief purposes, the decrease in the volume of traffic from the Indiana mines to the destinations here considered, during 1931 and 1932, compared with the 1929 traffic (the year prior to the reduction in the rates from the Illinois mines), was less than the decrease in the movement from the Illinois mines to the same destinations during the same period. On the record we are of the opinion that the percentage of the tonnage from the Indiana groups to the destinations herein considered during the period shown had not decreased as a result of the reduced rates from the Illinois groups.

The Commission was clearly justified upon the facts in reaching that conclusion, particularly in view of the statement made earlier in its report (R. 37) that prior to the Illinois intrastate rate reductions the Indiana groups had an advantage over their Illinois competitors in the Rockford and Freeport markets which the reduced rates proposed by appellee would reestablish.

Effect on Indiana and Illinois rate structure: The effect which the proposed reductions would

have upon competing mines in the Brazil-Clinton and Linton-Sullivan groups, in the other Indiana groups, in Illinois and Western Kentucky, and upon the revenues of appellee and the competing carriers serving the various groups are largely matters of calculation. The Commission found (R. 44):

> The reductions here proposed if permitted to become effective would result in a level of rates from the Indiana groups lower than that which we stated, in the Illinois case, to be well below the reasonable level of rates in this territory, and would probably lead to further reductions in the Illinois intrastate rates with like reductions in the rates from western Kentucky for the purpose of preserving the differential basis over the rates from the southern Illinois group prescribed by us, thus needlessly sacrificing the carriers' revenues and impairing their ability to render adequate and efficient railway transportation service.

While it is the Commission's judgment rather than that of witnesses which is to be exercised in reaching conclusions in such matters, it may be noted that every witness on the point, except one who testified for appellee, declared either that the proposed reductions should be carried to all mines in other Indiana groups (R. 91), or that it was inevitable that the reductions would be followed by retaliatory reductions in rates to all Indiana mines, to Illinois mines and to West Kentucky mines.

(Rozene, R. 116, 117; Malum, R. 122, 127; DeCamp, R. 129, 132.)

The record contains no testimony of any substance whatever which does not support at least in part the conclusion thus stated by the Commission concerning the effects of the proposed rates. Witness Waffle (representing Coal Trade Association of Indiana) stated in support of the reductions that all mines in the Indiana groups should have reductions of 17 cents (R. 91), but that he did not believe such reductions would follow in the rates from Illinois groups (R. 107). Appellee's own witness, who was its Coal Traffic Manager, did not seriously contend that retaliatory reductions would not follow those proposed by him. He said (R. 89): "My answer to the question whether these rates if permitted to go into effect, would disrupt the rates in the general territory, is to let the future take care of itself." He was willing that other carriers make 17-cent reductions in rates from the other Indiana groups "if they can get by", and said (R. 90):

> Now, when you are passing out 17 cents, why confine it to west Kentucky or southern Illinois? Let it go all the way around. Give them all 17 cents. I would be willing to do that. I am advocating that.

The Commission said (R. 42) that "in fact it would be difficult to conceive of a proposal more likely to precipitate unwarranted changes in a

keenly competitive rate structure than that here proposed." To reach any other conclusion the Commission would have been compelled to ignore substantial evidence and its own experience and observation in dealing with finely balanced rate relationships in highly competitive territories.

Revenue effects: In the light of existing rates and tonnage in this general territory, the Commission foresaw reductions alone costing the carriers more than $1,400,000 annually. (R. 43.) Further losses in revenue would result because the reductions were proposed to 36 stations on appellee's line intermediate to Rockford and Freeport, the reductions to these stations ranging from 4 to 10 cents. (R. 43–44.)

Concerning the effects of further reductions in coal rates upon revenues of carriers, Witness DeCamp pointed out that in normal years 40 percent of tonnage and 20 percent of freight revenues of Illinois Central Railroad Company was derived from coal traffic, that in 1931 coal traffic furnished only 31 percent of the total tonnage and 17 percent of its total freight revenues (R. 128). He further testified (R. 132) that any substantial reduction in coal rates in the Indiana-Illinois territory would have a "drastic" effect on the Illinois Central and other carriers serving that territory, for the reason that coal is their principal commodity.

This Court has held to be sufficient ~~similar~~ similarly supp findings by the Commission concerning the revenue

effects of state rates upon interstate commerce. *United States* v. *Louisiana, supra;* and *Florida* v. *United States,* 292 U. S. 1.

IV

THERE IS NO FOUNDATION IN EITHER FACT OR LAW FOR THE CONTENTION THAT THE COMMISSION INVALIDATED ITS ORDER BY IMPOSING UPON APPELLEE THE BURDEN OF SUSTAINING THE PROPOSED RATES

The District Court stated that "the burden is upon the party complaining" to establish the fact that a proposed reduced rate is unreasonably low (R. 51), citing *Anchor Coal Co.* v. *United States, supra.* We think that the court and appellee have misconceived and have misapplied the rule concerning the burden of proof.

When the hearing convened, the Commission's examiner stated that the subject of the hearing was appellee's proposed rates which had been suspended upon protests of various parties. (R. 73.) The record discloses no suggestion by the examiner concerning the order of procedure or the burden of proof, and no statement by appellee's counsel concerning the question whether the burden was upon it to justify the proposed rates. On the contrary, it shows (R. 74) that appellee's coal traffic manager, without protest, was the first witness to proceed to the stand and submit his testimony. Witness Waffle next appeared in support of the proposed reductions (R. 90) and, without raising any

question concerning the burden of proof or order of procedure, proceeded to submit his oral testimony and exhibits at great length. His testimony concluded the direct evidence on behalf of appellee (R. 108). Witnesses for parties who had protested against the rates then submitted their testimony and, at the conclusion thereof, Witness Waffle was recalled (R. 134) and testified in rebuttal. Following him Witness Leahy (representing Binkley Coal Company and others, interveners in the District Court, R. 14) also testified in rebuttal (R. 139) and his testimony concluded the hearing. (R. 143.)

The court held in *State of Ohio* v. *United States*, 6 F. Supp. 386, 388–389, that:

> A question of where lies the burden of proof can be of serious moment only when the evidence is in a state of equipoise. Here, with all the evidence before it, the Commission found that the intrastate rates were unduly preferential of Ohio shippers and localities and unduly prejudicial against interstate localities and shippers in Pennsylvania and West Virginia. There was no question of the burden of proof presented, for, as we have said, this was practically the only conclusion at which the Commission could have arrived.

It is clear from the report of the Commission that it did not require cancellation of the proposed rates merely because appellee's testimony was in-

sufficient to show their reasonableness, but because upon all the evidence the proposed rates were unlawful.

CONCLUSION

The decree of the District Court should be reversed and the bill of complaint dismissed.

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DECEMBER 1934.

APPENDIX

The Interstate Commerce Act, as amended, provides in part:

SEC. 1 (5) All charges made for any service rendered or to be rendered in the transportation of passengers or property or in the transmission of intelligence by wire or wireless as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful: * * * (c. 104, 24 Stat. 379, as amended; c. 3591, 34 Stat. 584; c. 309, 36 Stat. 544; c. 91, 41 Stat. 474; U. S. C., Title 49, Sec. 1).

SEC. 15 (1) That whenever, after full hearing, upon a complaint made as provided in section 13 of this Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this Act for the transportation of persons or property or for the transmission of messages as defined in the first section of this Act, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this Act, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or

prejudicial, or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation or transmission other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed. (C. 91, 41 Stat. 484; U. S. C., Title 49, Sec. 15.)

15 (7). Whenever there shall be filed with the commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested

carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of property, the commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be

found not justified. At any hearing involving a rate, fare, or charge increased after January 1, 1910, or of a rate, fare, or charge sought to be increased after the passage of this Act, the burden of proof to show that the increased rate, fare, or charge, or proposed increased rate, fare, or charge, is just and reasonable shall be upon the carrier, and the commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible. (C. 309, 36 Stat. 551; c. 91, 41 Stat. 484; c. 510, 44 Stat. 1447; U. S. C. Sup. VII, Title 49, Sec. 15 (7).)

SEC. 15a (2) [As amended June 16, 1933]. In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenue sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service. (C. 91, 48 Stat. 220, U. S. C. Sup. VII, Title 49, Sec. 15a.)

U. S. GOVERNMENT PRINTING OFFICE: 1934

In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 379

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., appellants

v.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, et al.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

REPLY BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

BURDEN OF PROOF

The complaint charges that the Commission "misconstrued the law and erred in holding that the burden of justifying said proposed rates was upon the plaintiff railroad company, and in requiring plaintiff to sustain such burden, whereas no such burden is imposed under the law upon railroad companies proposing reduced rates" (R. 5). The District Court stated that "there is no

presumption that a rate so initiated is unreasonably low. On the contrary the burden is upon the party complaining to establish that fact, and in the absence of evidence the initiate rate must stand" (R. 51).

In this Court the Chicago, Milwaukee, St. Paul & Pacific Railroad Company argues that "the Government loses sight of the real objection to the requirement on the part of the Commission that the Milwaukee proposing reduced rates assume the burden of justifying their lawfulness. It is not a question of order of witnesses or procedure before the Commission, but a question as to *whether or not, lacking evidence, the Commission may require the schedules to be canceled.*" (Italics supplied; Brief for Chicago, Milwaukee, St. Paul & Pacific Railroad Company, p. 22; see also Brief for the Binkley Mining Company, p. 12.)

In reply, the Government submits the following:

(1) First, it may be noted that the Milwaukee contends that the question of placing the burden of proof is "not a question of order of witnesses or procedure" but that it is "a question as to whether or not, lacking evidence, the Commission may require the schedules to be canceled." Thus stated, the objection relates solely to the sufficiency of the evidence, and this question is treated by the Government in its brief (pp. 48–61).

(2) It may be noted further that the question of burden of proof *is* a rule of procedure, contrary to

the assumption of the appellee railroad. Wigmore, Evidence, 2 ed., vol. 5, p. 2484 *et seq.;* Thayer, Evidence, 388. Section 17 of the Interstate Commerce Act provides that "the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice." 24 Stat. 385, Feb. 4, 1887; U. S. C. Tit. 49, Sec. 17 (1). "The Commission is an administrative body. The validity of its proceedings is not dependent upon compliance with procedural rules as to pleading and practice which prevail in courts of law." *Louisville & N. R. Co.* v. *Sloss-Sheffield Steel & Iron Co.,* 295 Fed. 53, 56, affirmed 269 U. S. 217; and see *Arcadia Mills* v. *Carolina, C. & O. Ry.,* 293 Fed. 639, 642; *United States* v. *I. C. C.,* 51 F. (2d) 429, 430.

Appellee railroad points out that the burden of proof is expressly placed upon the carrier to justfy increased rates. 41 Stat. 486, February 28, 1920; U. S. C. Tit. 49, Sec. 15 (7). Upon the basis of this provision and the rule of construction "*expressio unius est exclusio alterius*", the railroad appellee argues that, since a carrier may propose whatever rates it will in the exercise of managerial judgment, in all other cases the burden must fall not upon those proposing the rates but upon those opposing rates. (Brief for the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, pp. 20–23.)

On the contrary, however, Section 17 of the Act gives the Commission discretion to "conduct

its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice", subject only, it is submitted, to the constitutional requirements of notice and fair hearing. The statute placing the burden of proof upon the carrier in cases where rate increases are proposed cuts down the discretion of the Commission with respect to this particular class of cases, but it does not cut down the discretion of the Commission in all others. As to them, Section 17 remains standing. If, therefore, it were the fact that in the present case the burden of proof was placed upon the appellee carrier, it was within the discretion of the Commission so to place it. The argument of the appellee is based merely upon a rule of construction which "must yield whenever a contrary intention is apparent." *Springer* v. *Philippine Islands,* 277 U. S. 189, 206; *United States* v. *Barnes,* 222 U. S. 513, 519.

(3) Appellees were given a full and fair hearing. As pointed out by the Government in its brief (pp. 61–63), appellees introduced evidence and one of them introduced rebuttal evidence. There is no claim or contention of prejudice or surprise. Although appellee asserted in its petition for rehearing and reconsideration (R. 223) that in its first report the Commission had "erred" in placing upon it the burden of justifying the proposed rates, it did not then assert that it had been prejudiced, nor did it offer to submit any further evidence

whatever. It did not then nor does it now claim that the Commission prevented it from submitting all the evidence it desired, or failed in any way to accord a full and fair hearing.

As this Court said in the *New England Divisions Case,* 261 U. S. 184, 200:

> A full hearing is one in which ample opportunity is afforded to all parties to make, by evidence and argument, a showing fairly adequate to establish the propriety or impropriety, from the standpoint of justice and law, of the step asked to be taken.

Here, with all the evidence in, the Commission issued its order based upon substantial evidence; and this is all that is required under the leading decisions of this Court. *I. C. C.* v. *Ill. Cent. R. Co.,* 215 U. S. 452, 470; *I. C. C.* v. *Union Pac. R. Co.,* 222 U. S. 541, 547.

(4) Finally, the position taken that the burden of proof was placed upon the appellee, Chicago, Milwaukee, St. Paul & Pacific Railroad Company, seems by no means clearly warranted. It is true that the first report of the Commission states, "We find that the proposed schedules have not been justified" (R. 12). But these words standing alone are at the most ambiguous so far as the burden of proof is concerned. They must, moreover, be read with the rest of the report. It is true also that in the second report, in quoting from Ex-lake Iron Ore from Chicago to Granite City, 123 I. C. C. 503,

the Commission said (R. 46), "* * * In suspension proceedings, in view of the burden of proof, we are justified in condemning a proposed rate, protested as too low, if the carriers which sponsor it do not sufficiently show that it will cause gain rather than loss." It seems fair to conclude, however, that it was not this part of the quotation upon which the Commission was especially relying but upon that which immediately followed, to wit, "But our authority, in our opinion, goes further. We are justified in condemning a proposed rate as too low if the evidence warrants the conclusion that it will, because of its lowness, tend to precipitate changes in rate structure or in traffic which will be harmful to the public interest, having in mind our responsibility for railroad earnings in general under Section 15a" (R. 46). Similar language is used in another part of the second report of the Commission (R. 42). This language and both reports when read as a whole indicate, it is submitted, that the order of the Commission was based not upon a mere technical ruling as to the burden of proof and the failure of the appellee to sustain the same, but upon the broader proposition that upon the whole of the evidence, in the large that introduced by the protestants, although in part also that furnished by the appellee, it was apparent (R. 46–47)—

> that the proposed rates, if permited to become effective, would lead to a disruption of the rate structure on coal in the Indiana and

> related areas, thus impairing the revenue of the carriers serving those areas and their ability to provide the adequate and efficient transportation service contemplated by Section 15a of the act; that they would cause a disruption of the individual groups from which the rates are proposed; and that they would cause a disruption of the long-standing rate relation existing for competitive purposes, between the several Indiana groups.
>
> We find that the proposed rates would be unreasonable and in violation of sections 1 (5) and 15a (2) of the act.

This is an affirmative finding reached, it is submitted, as a result of the whole of the evidence, not a mere finding that the appellee had failed to sustain the burden of showing that the proposed rates were lawful.

As this Court said in *State of Ohio* v. *United States*, 292 U. S. 498, 506:

> The assertion that appellants were denied a fair hearing rests not upon any refusal to receive evidence tendered, but upon the Commission's alleged misconception of the rules as to burden of proof. It is said that from the outset the Commission acted upon a presumption that the reduced Ohio rates were unlawful and cast on the appellants the burden of overcoming it by a preponderance of proof impossible of production.

This complaint is founded upon a portion of the opening sentence of the report and two sentences near its close and by an analysis of the remainder of the report intended to show that the Commission gave too little weight to appellants' evidence and too much to that in opposition. On examination of the record, the report and the findings, we are satisfied there is no adequate foundation for the contention. The excerpts from the report which are cited, when read in their context, indicate only that the Commission intended fairly to inquire with respect to the lawfulness of the attacked rates and, after evaluating all the proofs on both sides, concluded that the preponderance was heavily against the appellants. The hearing was fair.

CONCLUSION

An examination of the precise nature of certain of the objections of appellees, and of the ruling of the lower court, and of the reports of the Commission discloses that appellees are asking this Court to sustain the lower court in weighing the evidence anew and setting aside the findings and conclusions of the Commission based upon substantial evidence. As indicating clearly that appellees are requesting this Court to sustain the lower court in substituting its judgment for that of the Commission on an administrative matter, the language in the brief of

appellee, Milwaukee Railroad, at p. 32, is especially pertinent: "The Commission has the power to suspend and require to be canceled any such proposed rates as might be made if found to be unlawful." This language is used in connection with the statement that "no witness representing any railroad (i. e., any competing railroad) appeared at the hearing and testified that his line would reduce any rates in the event the proposed rates became effective." That is to say, the appellee is asserting that if competing carriers in the future propose rate reductions, with consequent disruption of the rate level in the area and impairment of the revenues of the carriers, then "the Commission has the power to suspend and the power to cancel any such proposed rates if found to be unlawful." In short, the lower court took the novel position and the appellee makes here the ingenious argument that, though the lower court should set aside the order of the Commission cancelling appellee's proposed rate reductions, nevertheless the lower court could in the future sustain the Commission if carriers competing with the appellee should propose reductions of their rates. That is to say, the lower court substituted its judgment for that of the Commission with respect to the proposed rate reductions of the appellee and set the Commission's order in the instant case aside, but held itself free

to sustain the orders of the Commission if subsequently proposed rate reductions by competing carriers were found by it to be unlawful. And appellee would have this Court sustain the lower court in this holding.

This distinction between the order of the Commission in the instant case and orders which it may make in the future with respect to proposed reductions by competing carriers is apparently based upon the proposition that the Commission's order in the instant case was itself grounded upon a prediction, i. e., upon the probability that competing carriers would propose rate reductions if appellee's proposed reduced rates were allowed to become effective. This prediction by the Commission was proper. As has been demonstrated in the main brief of the Government and the Interstate Commerce Commission, this prediction of the Commission was based upon testimony and upon the experience of the Commission. All findings by the Commission with respect to the future effects of rates are, in a sense, predictions. They are, nevertheless, valid if sustained by evidence as interpreted by the observation and experience of this expert body.

It is submitted that the decree of the lower court should be reversed and the bill of complaint dismissed.

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FEBRUARY 1935.

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FILE COPY

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1934.

No. 379

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ILLINOIS CENTRAL RAILROAD COMPANY, ET AL.,

Appellants,

vs.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, ET AL.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS.

REPLY BRIEF FOR RAILROAD APPELLANTS.

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Chicago, Ill.,
Feb. 1, 1935.

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tent to which they take issue with the appellants in regard to matters of law. They apparently concede the general power of the Commission to prevent reductions in rates which would precipitate general rate reductions and bring about an unwarranted dissipation of the carriers' revenue. They contend, however, that the instant case does not present an occasion for the exercise of that power in the manner in which the Commission did exercise it, and in their efforts to cut down the power to fit their conception of the case so restrict its exercise that as a practical matter they destroy it. For example, it is apparently the position of the Milwaukee (page 38 of its brief) that before a reduced rate can be found unlawful it must be found noncompensatory and, further (page 40 of its brief), that the rate structure which the reduced rates would disrupt must be found lawful in every respect. Such restrictions would paralyze the administrative arm of the Commission. The non-compensatory requirement was disposed of in *Jefferson Island Salt Mining Co.* v. *United States*, 6 F. (2d) 315, discussed in our original brief. The particular rate adjustment here involved had been prescribed or approved by the Commission to an unusual degree. The Commission had held that the general level of the rates was low. It had recently held in the thirteenth section case that the relationships between the rates from the Indiana groups and the rates from the Illinois groups to Rockford and Freeport which the Milwaukee's reductions would disrupt were not unlawful. It found that the relationships of the Illinois groups to each other were in general accord with those prescribed by it in an earlier proceeding and that the relationships of the Indiana groups to each other, though not prescribed by it, were of long standing. The Commission it is true, had not prescribed or approved every individual rate and relationship in the adjustment, but it is obvious that the Commission is not required to

find every other rate in a particular adjustment lawful before it can find an individual rate is unlawful. The issue in the instant case was the lawfulness of the rates proposed by the Milwaukee and whether the disruption of the general rate structure in the manner Milwaukee proposed was warranted under the circumstances. This issue the Commission decided correctly and it is of no consequence what it might have held with respect to other rates.

The Milwaukee further contends that the Commission cannot prevent a proposed reduction in rates without prescribing a specific minimum rate to be observed thereafter. This proposition has been discussed at some length in the brief for the United States and the Commission (pages 39-43). In addition to the cases there cited, we call attention to the Commission's discussions of its powers of suspension in *Salt From Louisiana Mines To Chicago,* 69 I. C. C. 312, 313 and *Lignite Coal From North Dakota,* 126 I. C. C. 243, 244, in which the practical effect of the Milwaukee's contention is clearly indicated.

The purpose of this reply brief on behalf of the appellant railroads, however, is not to deal with the discussions of the points of law in the briefs for the appellees, as such, but instead to analyze and answer three specific contentions made by the appellees with regard to the state of the evidence and the Commission's treatment of the evidence in arriving at the conclusions embodied in its findings and order. These contentions concern the evidence with regard to rates to points other than Rockford and Freeport, comparisons of rates and distances and the alleged inconsistency of the Commission's findings and order in the instant case with its prior decisions dealing with the western Kentucky rates. Considerable portions of the appellees' briefs are given over to discussion of these matters. Although the appellees' arguments on these points are generally couched in terms of "the arbitrary disre-

garding of evidence" and "lack of evidence," when analyzed they become a plea to this Court to re-examine the evidence before the Commission, weigh it and substitute the Court's judgment for that of the Commission. The portions of the appellees' briefs dealing with the evidence, and particularly such portions of the brief of the Indiana operators, the Binkley Mining Company, *et al.*, consist in a large measure of detailed comparisons of rates and distances in an effort to show that a different conclusion should be drawn from the evidence than that which was drawn from it by the Commission. These arguments might have constituted proper arguments before the Commission but we do not believe that they deal with matters with which this Court is primarily concerned and that the Court will see at the outset that the appellees' plea is in fact a plea that this Court weigh the evidence and substitute its judgment for that of the Commission.

The detailed nature of the appellees' treatment of the evidence on the particular points under consideration has necessitated a detailed and perhaps tedious reply. We have not undertaken to controvert specifically every statement made in the appellees' briefs regarding the evidence but have endeavored to deal with the evidence in a general way in so far as the situation permitted. We believe that if the Court considers it necessary to examine the evidence in somewhat greater detail on these points than it was treated in our original brief, it will conclude from the analysis of the evidence in this reply, not only that appellees' contentions amount to a plea to weigh the evidence, but also that they are in fact without support in the evidence itself. The argument with respect to the three points to be treated has been summarized in topical headings.

ARGUMENT.

THE COMMISSION DID NOT ARBITRARILY DISREGARD THE RATES AND DISTANCES TO THE DESTINATIONS OTHER THAN ROCKFORD AND FREEPORT WHICH WERE INTERMEDIATE TO THOSE POINTS AND THE INDIANA ORIGIN GROUPS.

It is contended at length in the brief for the Indiana operators, The Binkley Mining Company, *et al.*, that the Commission arbitrarily disregarded the evidence relating to the rates and distances to the destinations intermediate to the origin groups and Rockford and Freeport. They set out in tables on pages 4 and 5 of their brief, in the section devoted to the statement of the case, the rates and distances from the various origin groups to Rockford and Freeport and to eight of the intermediate destinations as shown by them in their Exhibits 8 and 9. A footnote to the tables states that all of the distances other than those to Rockford and Freeport were shown only in the exhibits of these interveners and are not controverted. This is incorrect as to DeKalb. Distances to DeKalb were shown in Exhibit 29 of the Southern Illinois operators' (R. 195), recapitulated in their Exhibit 30 (R. 201). The distances there shown conflict with the distances shown by the Indiana operators in the tables in their brief. For example, the distance from Southern Illinois to DeKalb shown in Exhibit 30 is 336 miles, compared with a distance of 359 miles shown by the Indiana operators. There are likewise discrepancies with respect to other distances to DeKalb.

The Indiana operators state on page 15 of their brief that the Commission's consideration dealt only with the destinations of Rockford and Freeport and call attention to numerous rates and distances to intermediate points in succeeding pages. The Commission's reports show clearly

that the Commission did not disregard the intermediate points. The rates to DeKalb and to other representative intermediate points selected by the Indiana operators are referred to in the report of Division 2 (R. 11), and the statement made:

> "We are of the opinion that the distances from the Brazil-Clinton group to Rockford and Freeport, rather than to all of the stations in the footnote, afford the proper basis for comparison."

In other words, the Commission rejected the averages of the distances to the intermediate destinations, several of which had been set out by it in its report preceding the statement quoted. Rates and distances to the representative intermediate points are likewise set out in the report of the full Commission (R. 43). Comparisons of the average distances were made.

It is true that the Commission did not give the weight to the evidence with respect to the rates and distances to the intermediate points that the Indiana operators contend should have been given to it, but in so doing the Commission was acting entirely within its province. Furthermore, its action with respect thereto was entirely in accord with the record. The importance which the Milwaukee itself, the respondent before the Commission, attached to the intermediate points is clearly indicated by the manner in which it published its rates. Its witness testified that the reductions of 17 cents per ton in the rates to Rockford and Freeport were for the purpose of restoring the relationships which existed prior to August 20, 1930, the date on which the reductions in the rates to Rockford and Freeport required by the Illinois Commission went into effect (R. 74). The Rockford and Freeport rates were simply blanketed back (observed as maxima at intermediate points) as far as Bensenville, on one of the Milwaukee's routes from Indiana, and Duffin, on the other (R. 80). This was ob-

viously to meet the requirements of the long and short haul clause of the fourth section of the Act, and not on account of any concern for the rates and relationships at the intermediate points.

The importance the Milwaukee attached to the rates to the intermediate points is likewise indicated by its testimony before the Commission. Not a single rate or distance to any intermediate point is shown in its Exhibits 1 to 6, inclusive (R. 143-149). Exhibit 2 (R. 144), dealing at length with the history of the rates and relationships, covers Rockford and Freeport only. The witness for the Indiana operators referred only to Rockford and Freeport in designating the important destinations involved in the case (R. 90). The fact is, as the record as a whole demonstrates, the Milwaukee based its case before the Commission on Rockford and Freeport and the case was fought out before the Commission on that basis. The Commission correctly decided the case in the light of the record before it and committed no error in refusing to give to the evidence dealing with the rates and distances to the intermediate points the controlling weight which the Indiana operators insist it should have. As we have previously stated, the Commission's reports show this evidence was not arbitrarily ignored. The Commission, instead, weighed this evidence in the light of the record and decided the case accordingly.

On page 2 of their brief, the Indiana operators question the accuracy of the definition of "group rate" in the footnote on page 3 of the brief for the United States and the Commission on the ground that to some of the intermediate points the rates via some of the more circuitous routes from the Brazil-Clinton and Linton-Sullivan groups are higher than the rates from the Milwaukee mines in those groups. Such higher rates and the routes are set out in the tables on pages 4 and 5 of the Indiana operators' brief.

This does not show at all that the government's definition was inaccurate. These particular rates constituted exceptions to the group rate adjustment, of which the Commission was perfectly aware. The situation was referred to in the report of Division 2 (R. 11), and in the report of the full Commission (R. 44). The mere fact that in certain minor instances the rates from other mines in the Brazil-Clinton and Linton-Sullivan groups to intermediate points were higher than the rates maintained by the Milwaukee from its mines does not by any means constitute a reason for permitting the reductions in rates proposed by the Milwaukee.

THE COMMISSION HAS NOT ARBITRARILY DISREGARDED EVIDENCE CONSISTING OF COMPARISONS OF RATES ON A STRICT MILEAGE BASIS. THE RATE ADJUSTMENT INVOLVED IS A DIFFERENTIALLY RELATED GROUP RATE ADJUSTMENT IN WHICH MILEAGE HAS NOT BEEN CONTROLLING AND THE LAWFULNESS OF THE MILWAUKEE'S PROPOSED RATES WHICH WERE A PART OF THIS ADJUSTMENT COULD NOT BE DETERMINED BY MILEAGE IN THE MANNER ATTEMPTED BY THE MILWAUKEE AND THE INDIANA OPERATORS.

A considerable portion of the testimony of the witnesses before the Commission was given over to the methods of arriving at proper distances in a group rate adjustment and to comparisons of rates and distances. Much of this testimony was conflicting. The conflicts were especially sharp with respect to the weight which should be given various rate comparisons on a mileage basis. The Commission selected out of this conflicting testimony average distances from the principal origin groups to the principal destinations and set them out in its reports (R. 11, 39). The appellant railroads discussed the element of distance in their original brief, beginning on page 72, in which they endeavored to bring out that the Commission acted well

within its province in its treatment of the element of distance in this differentially related group rate adjustment and that its action was by no means arbitrary or unlawful. The greater part of the brief for the Indiana operators, the Binkley Mining Company, *et al.*, beginning on page 14, is devoted to a detailed comparison of rates on a strict distance basis. Similar comparisons are referred to in the brief for the Milwaukee on pages 26 and 27. The treatment of the element of distance in the briefs for the Indiana operators and the Milwaukee would seem to call for a somewhat more detailed discussion of the subject than was made in the original brief for the appellant railroads.

Three different methods of arriving at the distances to be used in connection with the various group rates were employed by the witnesses before the Commission. The method employed by most of the witnesses and adopted by the Commission (R. 10, 39), was the averaging of the distances via the short tariff routes from all origins on all lines in each particular group. This means that the distance via the shortest route over which the group rate is published to apply from each billing point on each line in the group is ascertained, these distances totaled, and the total divided by the number of the billing points used. Where, as is usually the case, the group rate from a billing point applies under the tariffs over several routes, the distance via the shortest tariff route only is used and the more circuitous distances are thus disregarded. Where a billing point is located on two or more different lines it is considered as an origin point on each of the lines and the short tariff distance in connection with each of the origin lines is included. The billing point is likewise counted as a separate billing point on each of the origin lines on which it is located in arriving at the total number of billing points in the group. This is what is meant by the term "all points on all lines" used throughout the testimony.

The second method of arriving at average distances is similar to the first, with the exception that where a billing point is located on more than one origin line, only the distance via the shortest tariff route in connection with any origin line is taken into account, the distances via tariff routes including the other origin lines being disregarded, and the billing point is counted but once in arriving at the total number of billing points in the group. The witness Rozene, representing the Southern Illinois operators, showed average distances arrived at in both of the methods just described, *i. e.* "all points on all lines," and "each billing point used but once," in his series of exhibits, Exhibits 27 to 30, inclusive (R. 183-201). Exhibit 27 is shown on page 183 of the printed record as having been filed by the witness Waffle. This is in error. The exhibit was actually filed by the witness Rozene (R. 114). The two methods of arriving at average distances via short tariff routes were explained by the witness in detail and distinguished in his testimony. (R. 114, 115, 118, 120). Generally speaking, the differences between the distances arrived at using each billing point but once and using all billing points on all lines are not great, as the series of exhibits referred to shows.

A third method of determining distances was employed in the Indiana Operators' Exhibit 19 (R. 95, 169). The method is described as "distances via short rate making line routes" and consists of selecting in each group the origin line which has the shortest route to the destination involved, whether via its single line or in connection with some other carrier, and averaging the distances via this short tariff route from the points on such origin line only, disregarding all other origins on all other lines in the group and the distances therefrom. These distances were apparently shown by the witness for the Indiana operators because distances similarly arrived at had been referred

to in the thirteenth section case. The witness stated (R. 96) that the Indiana operators did not believe that short rate making line distances should be used in determining the relative levels of rates or the relationships of rates. That, however, would be the result of using distances from points on the Milwaukee only in arriving at distances from the Brazil-Clinton and Linton-Sullivan groups. In other exhibits where average distances from groups were shown, the witness of the Indiana operators used the average of the short tariff route distances from all points on all lines in the particular group (R. 95). He endorsed the "average of the short tariff routes from all points on all lines" method of arriving at group distances which was adopted by the Commission in its report (R. 104).

The comparisons of group rates and group distances set out by the Commission in its report (R. 11, 39), speak for themselves. It was not comparisons such as these, however, upon which the Milwaukee and the Indiana operators principally relied before the Commission. Their position was that inasmuch as the Milwaukee had chosen to disrupt the Brazil-Clinton and Linton-Sullivan origin groups and establish the proposed lower rates which applied only from mines on its lines in those groups, only those particular points in the origin groups and the distances via the route of the Milwaukee could be taken into consideration in arriving at average distances to the destinations involved, and that it was proper to compare such average distances with either the average distances from all points in the groups in the Illinois field, or with the average distances from points on individual lines only in those groups. It is comparisons such as these which the Milwaukee and the Indiana operators in effect insist in their briefs were not given the proper weight by the Commission. Several examples of comparisons of this nature will be found beginning on page 18 of the brief for the Indiana operators.

An example of such comparisons in the Milwaukee's brief appears on page 27, where it is stated:

> "To further emphasize the fact that the conclusion by the Commission that the rates would be unreasonably low in violation of Section 1 (5), was simply arbitrary, attention is called to the fact that while the Milwaukee proposes a rate of $1.70 from mines on its line in the Brazil-Clinton district to Rockford, it is required to join in rates from mines in the Springfield, Illinois, group to Rockford of $1.70 over routes which are much longer and which reach as a maximum 373 miles (R. 147). Certainly the conclusion that a rate of $1.70 for the transportation of coal 231 miles, single line, is unreasonably low as compared with the same rate for 373 miles, joint line, is simply arbitrary and such a comparison offers no support for the finding."

The Commission's reply to the contentions of the Milwaukee and the Indiana operators we have been discussing was twofold, as we brought out on page 74 of our original brief. The full Commission explained in its report (R. 39) that it was here dealing with a group rate adjustment and that the average distances from all points in the group should be used and that any other method of computing distances would tend to destroy all groupings and could not be adopted.

The Commission further pointed out that if distances from only those mines on certain roads in the various groups were to be compared there were comparisons which favored the rates from the mines in the Illinois groups as well as those which favored the Milwaukee's proposed rates from its mines in Indiana, using only the distances from the Milwaukee's mines. As an example, the Commission called attention to the average distance via the short tariff route from mines on the Illinois Central only in the Springfield group to Rockford of 199 miles, compared with the distance to Rockford from mines on the Milwaukee in the Brazil-Clinton group of 231 miles. This comparison answers specifically the statement in the Milwaukee's brief

quoted above. The Milwaukee stresses in its brief the difference that the distance from its mines is via its single line route, whereas the distance from the Illinois Central Springfield mines is via a joint line route. The routings in the exhibits show, however, that the carriers have made no distinction between single and joint line routes in the establishment of their rates. Furthermore, either route of the Milwaukee from the Indiana field to northern Illinois involves at least one division point (R. 91). The fact that joint routes necessitate interchanges with connecting lines is not of controlling significance, especially where the carriers themselves have made no distinction between single line and joint line routes.

It is obvious that if the principles of group rate making are discarded and distances from only selected points in the groups are taken, the distances from the nearest points in one group can be compared with the distances from the farthest points in another group and practically any desired showing obtained, as was frankly recognized by the witness for the Indiana operators (R. 103). Yet, on page 17 of their brief, the Indiana operators compare rates from Mt. Olive, Ill., in the Springfield group, using distances from Mt. Olive alone, with the proposed rates from the Milwaukee mines in the Brazil-Clinton group, using distances from the Milwaukee mines alone. The Milwaukee mines are the nearest to the Brazil-Clinton group, Exhibit 8 (R. 149). Mt. Olive is in the southern part of the Springfield group near East St. Louis (R. 85) and consequently one of the most distant points in that group. The witness for the Milwaukee who introduced the Mt. Olive distances in Exhibit 1, apparently offered them for information only and not as a fair comparison (R. 85).

The witness for the Milwaukee frankly conceded the obvious fact that the coal rates have not been made on a mileage basis and stated that the group basis should be

continued (R. 87). The testimony of the witness for the Indiana operators, set out on page 76 of our original brief, is to the same effect. The Indiana operators advocated the extension of the Milwaukee's reduced rates to all points in the Brazil-Clinton and Linton-Sullivan groups, and hence the preservation of those groups (R. 102). The witness for the Indiana operators would not say that rates in this adjustment should be fixed on distance alone (R. 138). Yet, in spite of this testimony both the Milwaukee and the Indiana operators urged methods of comparing rates and distances in their briefs which would be absolutely destructive of group rate adjustments, as the Commission pointed out in its report.

Several decisions of the Commission were cited in a footnote to page 74 of our original brief as indicating the importance of the group method of making rates on coal. In one of the cases there cited, *Intrastate Coal Rates to East St. Louis,* 161 I. C. C. 371, the Commission, on page 379 of the report, made the following quotation from an earlier case, *Appalachian Power Co.* v. *N. & W. Ry. Co.,* 144 I. C. C. 333, 342, which accurately summarizes the situation:

> "It is a generally accepted practice to maintain coal rates on group bases on the theory, often vigorously supported by both operators and consumers, that such an adjustment gives consumers an opportunity to purchase coal in competitive markets, and enables farther distant mines to compete at the various points of consumption with mines which are nearer to such points. The establishment of distance rates would tend to localize the source of supply of the consumers, destroy to a large extent the existing competition, and probably have an important influence on the cost of coal."

The tendency to make rates from the more distant groups relatively lower, distance considered, than from nearer groups was recognized by the Commission in the instant case, and was commented upon in the report of the full Commission (R. 40, 41), where it is pointed out that it is

true that the rates from the more distant southern Indiana groups are relatively lower, distance considered, than the rates from the Brazil-Clinton and Linton-Sullivan groups, but as the trend of the traffic is to the important markets to the north and northwest of the coal producing areas, the existing relation is apparently for the purpose of enabling producers in the more distant southern groups to compete in these markets with producers in the northern groups.

The same observation applies to the rates from the southern Illinois groups. Numerous exhibits expressed the rates involved in terms of percentages of one of the few mileage scales on coal, the Holmes & Hallowell scale, as a sort of common denominator for unequal rates applying for unequal distances. Percentages of this scale are set out by the Commission in its report (R. 11, 39). The factor we have been discussing, namely, that the rates from the more distant groups are relatively lower, distance considered, than the rates from the nearer groups, had to be borne in mind in considering percentages of the scale. This was recognized by the witness for the Indiana operators (R. 103, 104). All of these considerations with respect to distance which we have been discussing are matters with which the Commission is especially qualified to deal. It is not the province of the court to substitute its judgment for that of the Commission with regard to such matters.

We pointed out on page 76 of our original brief that this Court has recognized that distance is only one element to be considered in the fixing of rates. There are two important varieties of rates with respect to which distance is not controlling, switching rates and group or blanket rates. Examples of both varieties of such rates have recently been before this Court. *Illinois Commerce Commission* v. *United States,* 292 U. S. 474, decided May 28, 1934, involved intrastate switching rates within the Chicago Switching District which the Commission had required to be increased

to the level of the interstate switching rates within the district under the thirteenth section. One of the principal grounds upon which the thirteenth section order was attacked by the appellants was that a cost study relied upon by the Commission was not sufficiently representative. The chief criticism of the study was that there was a great disparity between the average length of hauls between intrastate and interstate movements and that the Commission, therefore, erred in prescribing a uniformity of rates throughout the entire district. On this point, this Court said, page 486:

> "So far as this objection is of any force it goes only to the weight of the evidence and not to the want of it. Treating an area as a unit and applying a uniform blanket or group rate within it, as is the common practice with respect to switching rates, is within the competence of the Commission. See *St. Louis Southwestern R. Co.* v. *United States,* 245 U. S. 136, 138, Note 1, 141; *United States* v. *I. C. R. R. Co.,* 263 U. S. 515, 518, Note 1; *Virginian Ry. Co.* v. *United States,* 272 U. S. 658, 660, 664."

In *State of Ohio* v. *United States,* 292 U. S. 498, also decided on May 28, 1934, involving intrastate coal rates in Ohio under the thirteenth section, this Court had before it a differentially related origin group coal rate adjustment similar to the one involved in this proceeding. Among the contentions of the appellants was the claim that the Commission exceeded its authority in requiring state rates to be raised without having found or made reasonable all substantially competitive interstate rates. This claim was based largely on the circumstance that the relationship stressed by the Commission was the relationship to the interstate rates from the nearer groups and that the rates from the more distant so-called Crescent groups had not been considered. This Court set out on page 502 of the opinion, a rather elaborate description of the groups, the extent of the groups, and the differential relationships. Groups and

differentials were further referred to on pages 509 and 510 of the opinion. The Commission's order was sustained.

In *St. Louis Southwestern Railway Co. v. United States*, 245 U. S. 136, this court sustained an order of the Commission establishing through routes and joint rates on logs and lumber from the blanket territory in the southwest to Paducah, Kentucky. The blanket territory is thus described in the footnote on page 138 of the opinion:

> "This region is called 'blanket territory,' because a 'blanket' rate on logs and lumber is made from all shipping points within the territory to points beyond. That is, the rate is the same regardless of the distance hauled within the territory, which extends about 400 miles from north to south and 300 from east to west."

In *Interstate Commerce Commission* v. *Union Pacific R. R. Co.*, 222 U. S. 541, an order of the Commission prescribing a rate of 45 cents on lumber from the Pacific Coast to St. Paul, Minn., was sustained. The carriers contended that the Commission's order was without support in the evidence. One of the grounds relied upon was that the Commission had allowed a rate of 50 cents from the Pacific Coast to Omaha, a shorter distance than to St. Paul, to stand. The carriers argument is thus summarized on page 551 of the opinion:

> "It was argued that when the Commission had adjudged that a rate of 50 cents for 1800 miles was reasonable, it was manifestly unreasonable to allow a rate of 45 cents for 2052 miles, and that such order was so palpably unjust and unreasonable as to be beyond the substance, if not beyond the form, of the Commission's power."

This contention is discussed at length. The Court pointed out that the order must be read in the light of the entire record, including the important fact that the carriers themselves in making their rates made a similar distinction between the long and short line. In disposing of the carriers' contention the Court said, page 553 of the opinion:

> "It is quite true that the carriers may do what they

could not be compelled to do. But it is not to be assumed that they made and continued these different rates between these two cities arbitrarily and without reason. It was proper for the Commission to consider the weight and the character of these reasons and the causes which prompted and justified the carriers in charging these different rates. When the Commission maintained the same ratio of difference as that made by the carriers themselves, it cannot be fairly said that such an order was so arbitrary as to be palpably and gravely unjust, and beyond the substance, if not the form, of its power."

It is submitted that these decisions to which we have referred show conclusively that the arguments of the Milwaukee and the Indiana operators advanced in their briefs go only to the weight of the evidence and not to the lack of evidence. The weight of such evidence is peculiarly within the province of the Commission, which is best qualified by many years of general experience and past litigation dealing with this specific rate structure to determine what weight should be given to the numerous and conflicting comparisons of rates and distances in this proceeding.

THE COMMISSION'S DECISION IN THE INSTANT CASE WAS NOT INCONSISTENT WITH ITS PRIOR DECISIONS IN THE WESTERN KENTUCKY CASES, NOR DO THE FINDINGS IN THOSE CASES PROHIBIT FURTHER REDUCTIONS IN THE WESTERN KENTUCKY RATES TO MEET REDUCTIONS IN THE RATES FROM SOUTHERN ILLINOIS WHICH WOULD BE PRECIPITATED BY THE MILWAUKEE'S REDUCTIONS FROM THE INDIANA FIELD.

The Milwaukee stresses in its history of the rates, beginning on page 6 of its brief, the circumstance that after the Commission concluded in the thirteenth section case, *Intrastate Rates On Bituminous Coal in Illinois,* 182 I. C. C. 537, that it could not interfere with the reduction of 17 cents per ton in the intrastate rates from Illinois groups

to Rockford and Freeport, a like reduction of 17 cents per ton in the rates from western Kentucky to Rockford and Freeport was made on the theory that the outstanding order of the Commission in the first western Kentucky case, *Illinois-Indiana Coal Cases*, 128 I. C. C. 265, had definitely fixed the differential relationship between western Kentucky and Illinois on coal moving to destinations in northern Illinois, and that this reduction was permitted by the Commission. The Milwaukee brings out on page 9 of its brief that in the *Illinois-Indiana Coal Cases, supra,* the Commission related the rates from western Kentucky to the rates from the Indiana groups, including the Brazil-Clinton and the Linton-Sullivan groups, as well as to the rates from southern Illinois, although the relationship was expressed in terms of a differential of 35 cents western Kentucky over southern Illinois. The finding of the Commission on page 284 of the report in *Illinois-Indiana Coal Cases* is quoted in full. The Milwaukee's brief assumes, without so stating, that the order of the Commission entered in connection with the report conformed to the finding quoted. It is conceded that this assumption is correct, as an examination of the Commission's order of June 14, 1927, entered in connection with the Commission's report in *Illinois-Indiana Coal Cases* discloses.

In the finding quoted by the Milwaukee, the Commission found that the undue prejudice to mines in Illinois and Indiana and undue preferenc to mines in Kentucky condemned by it was due to the maintenance of unreasonably low rates from mines in western Kentucky, and should be removed by increasing the rates from said mines in the amount of 10 cents per net ton to all destinations in the states named (which included Illinois), to which the existing differential of western Kentucky over the southern Illinois group was 25 cents per net ton. Based upon this finding the Milwaukee makes two somewhat inconsistent

contentions. It contends, first, (page 10 of its brief) that inasmuch as relationships between the rates from western Kentucky, on the one hand, and the rates from the Brazil-Clinton and Linton-Sullivan groups, on the other hand, were prescribed in the *Illinois-Indiana Coal Cases,* and western Kentucky rates have been reduced 17 cents per ton, the proposed reductions of the Milwaukee of 17 cents per ton in the rates from its mines in the Brazil-Clinton and Linton-Sullivan groups were necessary to restore the prescribed relationships and, therefore, should not be prevented by the Commission. The second contention (page 32 of the brief) is that the Commission's conclusion that further reductions in the rates from western Kentucky would be precipitated by the Milwaukee's reductions is in error because any such attempted reductions in the western Kentucky rates would be in direct violation of the Commission's outstanding order in *Illinois-Indiana Coal Cases,* 128 I. C. C. 265, 284. If this latter contention is correct, the reduction of 17 cents per ton in the western Kentucky rates made following the reductions in the rates from southern Illinois was likewise in violation of the Commission's order and should be restored to their former level. An examination of the western Kentucky cases is all that is necessary to dispel the confusion which the Milwaukee's partial statement of the history of the rates has created.

The Commission's conclusion in the instant case with respect to the western Kentucky rates was not based on *Illinois-Indiana Coal Cases* alone. The western Kentucky differential of 35 cents over southern Illinois was thus described in the report of the full Commission (R. 35):

> "A differential of 35 cents over the southern Illinois group was fixed from western Kentucky to northern Illinois points, among others, in *Illinois-Indiana Coal Cases,* 128 I. C. C. 265, and recently affirmed in *West Kentucky Coal Bureau* v. *Illinois Central Railroad Company,* 172 I. C. C. 279."

The Commission's report in the second western Kentucky case, *West Kentucky Coal Bureau* v. *Illinois Central Railroad Company, supra,* explains why reference to relationships to the Indiana groups was omitted by the Commission in dealing with the rates to the northern Illinois points here involved, and also explains the statement of the full Commission (R. 44), that further reductions in the Illinois intrastate rates would lead to like reductions in the rates from western Kentucky for the purpose of preserving the differential basis over the rates from the southern Illinois group prescribed by it. In *West Kentucky Coal Bureau* v. *Illinois Central Railroad Company, supra,* the Commission reconsidered the western Kentucky rates and relationships previously prescribed by it in *Illinois-Indiana Coal Cases, supra.* Rates to destinations in Michigan, Illinois, Wisconsin, Minnesota, Iowa, Nebraska, North Dakota and South Dakota were involved. In the meantime, the Illinois intrastate rates had been reduced by the Illinois Commission. The following statement was made by the Commission in the *West Kentucky Coal Bureau Case* on page 293 of the report with respect to rates to points in Illinois:

> "As stated above, after we had prescribed, in the *Illinois-Indiana Coal Cases, supra,* an increase of 10 cents in the rates from mines in western Kentucky to points to which the then existing differential of western Kentucky over the southern Illinois group was 25 cents, the Illinois Commerce Commission prescribed certain reduced rates within Illinois. These reductions resulted in rate differences between the two groups ranging from 40 cents at Chicago to 59 cents at certain other points in Illinois. Such changes have increased the maladjustments stressed in the dissenting expressions in *Illinois-Indiana Coal Cases, supra.* This record is persuasive that the differentials resulting from the *Illinois-Indiana Coal Cases, supra,* should be observed as maxima. The question as to the lawfulness of the intrastate rates on coal in Illinois is be-

fore us in Docket No. 23130, *Intrastate Rates on Bituminous Coal Between Points in Illinois.*"

The Commission's findings on page 294 of the Report, are as follows:

> "We find that the rates assailed are not unreasonable, but that they are, and for the future will be, unduly prejudicial to complainants and unduly preferential of their competitors in Illinois and Indiana to the extent that they exceed, or may exceed, by more than 35 cents per ton of 2,000 pounds, the rates contemporaneously maintained from mines in the southern Illinois group and Evansville group in Indiana to the same destinations.
>
> "An appropriate order will be entered *except as to the rates assailed to points in Illinois from mines in western Kentucky.* In view of the fact that the level of the intrastate rates on coal in Illinois is now before us in No. 23130, we will not at this time enter an order with respect to the rates to points in that State, but upon determination of the issues in No. 23130, defendants will be expected to give effect to our finding herein with respect to the assailed rates to points in Illinois." (Italics ours.)

It should be noted that in this reconsideration of the western Kentucky rates no order was made with respect to the rates to points in Illinois on account of the pendency of the thirteenth section case, and that in the findings with respect to the rates to other destinations the minimum rate finding in the *Illinois-Indiana Coal Cases,* previously referred to, was abandoned and a finding in the form of a differential relationship of 35 cents per ton over the southern Illinois group and the Evansville group in Indiana substituted in its place. The Evansville group, the most southerly group in Indiana, was the only Indiana group mentioned and it was included because, generally speaking, it took the same rates as southern Illinois.

In *Illinois-Indiana Coal Cases, supra,* the Commission dealt with the northern Illinois territory as a whole and its findings with respect to relationships to the Indiana

groups were predicated on the Chicago situation, as is clearly indicated on pages 270, 271 and 283, of the report. Rates from the Brazil-Clinton and Linton-Sullivan groups to Chicago were prescribed on page 284 of the report. In the thirteenth section case, *Intrastate Rates on Bituminous Coal Between Points in Illinois,* 182 I. C. C. 537, which has already been fully described, the Commission dealt with the specific destinations in northern Illinois to which the Illinois Commission had reduced the intrastate rates. These destinations were Chicago, Rockford, Freeport, and Dixon. The reduction of 5 cents per ton in the rate from southern Illinois to Chicago was found to be in violation of the thirteenth section and the undue preference and prejudice was removed by the restoration of the former rate of $1.95 per ton, but when the Commission came to consider the individual rates to Rockford and Freeport it found that although the intrastate rates were well below the general level of rates in this territory, the same was true of the rates from the Indiana groups and that it could not require any increase in the Illinois rates to these points until the Indiana rates were increased to the level generally obtaining in this territory. The carriers had been instructed by the Commission in the *West Kentucky Coal Bureau Case* to conform their rates to points in Illinois to the findings in that case. This obviously required a reduction in the western Kentuncky rates to Rockford and Freeport of 17 cents per ton to restore the differential prescribed in the *West Kentucky Coal Bureau Case.*

There is no basis for the Milwaukee's assumption that this reduction in the western Kentucky rate constituted a violation of an outstanding order of the Commission, either with respect to the measure of those rates, or to their relationship to the rates from the Indiana groups. The relationships between the Illinois and the Indiana groups at Rockford and Freeport were found not to be unlawful in

the thirteenth section case. The only conclusion to be drawn from the Commission's report in the thirteenth section case is that the same situation would obtain with respect to rates from western Kentucky on the prescribed differential of 35 cents over southern Illinois.

The orders of the Commission in the *West Kentucky Coal Bureau Case* are not before the Court, but assuredly it is not to be presumed that rates which had been in effect an appreciable length of time are in violation of Commission orders.

The Milwaukee's entire argument that the Commission's decision and order in the instant case were inconsistent with the western Kentucky cases can be summarily disposed of by reference to the decisions of this Court holding that inconsistency in Commission decisions is not a matter of legal significance in determining the validity of its orders. In *Georgia Public Service Commission* v. *United States*, 283 U. S. 765, 775, this Court said

> "It is not our province to inquire into the soundness of the Commission's reasoning, the wisdom of its decision, or the consistency of its conclusion with those reached in similar cases."

In *Virginian Railway Company* v. *United States*, 272 U. S. 658, 665-666, this Court held:

> "This court has no concern with the correctness of the Commission's reasoning, with the soundness of its conclusions, or with the alleged inconsistency with findings made in other proceedings before it."

Western Paper Makers Chemical Company v. *United States*, 271 U. S. 268, 271, is to the same effect. While these decisions would constitute a complete answer to the Milwaukee's contention, if it were sound, it was thought best to lay the matter before the court fully and to show that the action of the Commission in this case was not inconsistent with its prior decisions regarding the western Kentucky rates.

CONCLUSION.

The order of the Commission under review in this case requiring the cancellation of the reduced rates proposed by the Milwaukee constituted a valid exercise of the Commission's power under the Act to prevent the disruption of a most important rate structure and the unnecessary dissipation of the carrier's revenues under circumstances and conditions which make the conservation of revenues of paramount importance. It was supported by ample findings of facts made in the Commission's reports, which were in turn fully supported by the evidence. We endeavored to bring out in our original brief, beginning on page 62, that it is clear from the opinion of the District Court that it undertook to weigh the evidence and substitute its judgment for that of the Commission. To sustain the District Court would be to permit important rate relationships, and ultimately the level of the rates, to be determined by the carriers under the protection of the courts rather than by the Commission, the body upon which Congress has imposed the duty of conserving the carriers' revenues so as to afford the people an adequate national transportation system. The decree of the District Court should be reversed and the bill of complaint dismissed.

Respectfully submitted,

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Chicago, Illinois.
Feb. 1, 1935.

No. 379

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CHARLES ELMORE C

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1934.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al.,

Appellants,

VS.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, et al.,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR THE BINKLEY MINING COMPANY, et al., APPELLEES.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1934.

No. 379.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al.,

Appellants,

VS.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, et al.,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR THE BINKLEY MINING COMPANY, et al., APPELLEES.

STATEMENT.

The Binkley Mining Company and fourteen other companies owning and operating coal mines in Indiana served by the Chicago, Milwaukee, St. Paul & Pacific Railroad, hereinafter referred to as the "Milwaukee," being vitally interested in the issues in this case, intervened as parties plaintiff in the proceeding in the District Court. (Rec. 14.) These interveners, as appellees, now urge that the

decree of the District Court herein be affirmed by this Honorable Court.

The statements of the case in the briefs for the United States and the Railroad Appellants in general set forth the nature of the proceeding before the Interstate Commerce Commission and the District Court. The statements of the appellants omit certain pertinent facts initially necessary to a consideration of the issues in this case, or contain statements which tend to confuse the facts.

Much is said in the report of the Commission and in the briefs for appellants in regard to groups and differential relationships. On page 3 in the brief for the United States in a footnote it is stated:

> "Several mines located in proximity to each other constitute a 'group,' 'origin group,' or 'rate group.' One rate applies on coal transported from all mines constituting one of these groups, and is known as a 'group rate.' (See R. 150-151, for illustration.)"

A reference to Exhibit 8 (R. 149, 154, inclusive) shows that appellants' statement in regard to groups is incorrect. For example, to the destination Forreston under the origin group Brazil-Clinton, it shows four of the railroads published a rate of $1.80, while a fifth railroad published a rate of $1.87, and that from the Linton-Sullivan group three railroads published rates of $1.85 and three railroads published rates of $1.92 to Forreston (R. 150); that to other destinations shown in said Exhibit 8, for example, to Rockford, all the railroads serving mines in the so-called Brazil-Clinton group published rates of $1.87, and all the railroads in the so-called Linton-Sullivan group published rates of $1.92. The mines are the same and the carriers are the same in each instance, but the carriers do not publish common rates from the same mines to each of the various destinations here involved.

The following tables taken from Exhibit 8 (R. 151 to 154) and Exhibit 9 (R. 154, 158) show in table I the rates of the Milwuakee in effect at the time it published its tariff suspended by the Commission headed in said Tables, "Present Rates," the rates in the tariff which were suspended, the average distance from the mines on the Milwaukee to the destinations shown in the table, the rates and average distances to the destination via carriers publishing a rate the same as that formerly published by the Milwaukee, and the rate and average distance via the carrier or carriers publishing a rate different from that formerly published by the Milwaukee; and also show the rate and average distance from the two Illinois groups to the same destinations.

TABLE I.

STATEMENT OF RATES AND DISTANCES FROM MINES IN THE BRAZIL-CLINTON GROUP AND THE CENTRAL ILLINOIS AND SOUTHERN ILLINOIS GROUPS TAKEN FROM EXHIBITS 8 AND 9.

	Clinton District			Other Carriers in Brazil-Clinton Group Publishing Same Rate as Present C.M.Ct.P.&P.		Other Rates from Brazil-Clinton		Central Illinois		Southern Illinois	
	Present Rate	Suspended Rate	Average Distance	Rate	Distance	Rate	Distance	Rate	Distance	Rate	Distance
Rockford	1.87	1.70	231	1.87	281	....	....	1.70	*245	2.00	**365
Freeport	1.87	1.70	260	1.87	314	....	....	1.70	**261	2.00	**384
Forreston	1.80	1.70	246	1.80	270	Pa. 1.87	352	1.70	284	2.00	395
Byron	1.80	1.70	228	1.80	249	Pa. 1.87	334	1.70	266	2.00	377
Davis Jct.	1.80	1.70	219	1.80	240	Pa. 1.87	325	1.70	260	2.00	368
Kirkland	1.80	1.70	206	1.80	246	....	....	1.70	244	2.00	350
Genoa	1.80	1.70	211	1.80	258	....	....	1.70	255	2.00	373
Elgin	1.80	1.70	188	1.80	237	....	....	1.70	249	2.00	377
Bensenville ...	1.80	1.70	169	1.80	217	....	....	1.70	243	2.00	366
DeKalb	1.74	1.70	194	1.74	257	....	....	1.60	224	1.90	359
Average ..	180.8	1.70	216	180.8	256.3	1.87	337	1.69	252	1.99	373

* This distance is that as shown by these Interveners. The Central Illinois operators showed the distance as 250 and 273 miles. The Commission shows the distance as 237.9 miles.

** These distances are those shown in the report of the Commission. All other distances are taken from those shown by these Interveners which are not controverted and are the only evidence as to distances to points other than Rockford and Freeport in the record and are shown in Exhibits 8 and 9.

TABLE II.

STATEMENT OF RATES AND DISTANCES FROM MINES IN THE LINTON-SULLIVAN GROUP AND THE CENTRAL ILLINOIS AND SOUTHERN ILLINOIS GROUPS TAKEN FROM EXHIBITS 8 AND 9.

	Linton District C.M.St.P.&P.			Other Carriers in Linton-Sullivan Group Publishing Same Rate as Present C.M.St.P.&P.		Other Rates from Linton-Sullivan		Central Illinois		Southern Illinois	
	Present Rate	Suspended Rate	Average Distance	Rate	Distance	Rate	Distance	Rate	Distance	Rate	Distance
Rockford ..	1.92	1.75	275	1.92	303	....	....	1.70	**245	2.00	**365
Freeport ...	1.92	1.75	304	1.92	332	....	....	1.70	*261	2.00	*384
Forreston ..	1.85	1.75	290	1.85	284(a)	1.92(b)	355	1.70	284	2.00	395
Byron	1.85	1.75	272	1.85	280(c)	1.92(d)	358	1.70	266	2.00	377
Davis Jct. .	1.85	1.75	263	1.85	313(e)	1.92(f)	349	1.70	260	2.00	368
Kirkland ..	1.85	1.75	250	1.85	274(g)	1.92(h)	301	1.70	244	2.00	350
Genoa	1.85	1.75	255	1.85	286(i)	1.92(j)	293	1.70	255	2.00	373
Elgin	1.85	1.75	232	1.85	275	....	....	1.70	249	2.00	377
Bensenville.	1.85	1.75	213	1.85	237	....	....	1.70	243	2.00	366
DeKalb	1.79	1.75	238	1.79	278	....	....	1.60	224	1.90	359
Average	185.8	1.75	260	185.8	286.3	1.92	343	1.69	252	1.99	373

(a) C. & E. I. and Big Four.
(b) Monon, I. C. and Penna.
(c) C. & E. I., Big Four and I. C..
(d) Monon and Penna.
(e) C. & E. I., Big Four and I. C.
(f) Monon and Penna.
(g) C. & E. I., Big Four, I. C., Penna.
(h) Monon.
(i) C. & E. I., Big Four, I. C., Penna.
(j) Monon.

* This distance is that as shown by these Interveners. The Central Illinois operators showed the distances as 250 and 273 miles. The Commission shows the distances as 237.9 miles.

** These distances are those shown in the report of the Commission. All other distances are taken from those shown by these Interveners which are not controverted and are the only evidence as to distances to points other than Rockford and Freeport in the record and are shown in Exhibits 8 and 9.

The statements in briefs of both appellants refer to the differential adjustment which would be disrupted by the rates published by the Milwaukee. Both statements fail to show clearly that the rates published by the Milwaukee and suspended by the Commission restored a relationship as between the mines on the Milwaukee and the mines in the central Illinois and southern Illinois groups which had existed for many years prior to the disruption caused by the reduction in the Illinois Intrastate Rates. (R. 77.)

Neither statement makes it clear that the Milwaukee published rates to 38 stations on its line in Illinois of $1.70 from mines in its Clinton district, and $1.75 from mines in its Linton district, and that Rockford and Freeport are the most distant stations from the mines on its line. Exhibit 8 (R. 149-154) shows that from the Clinton district the average distance from the Milwaukee mines ranged from 169 miles to Bensonville, Illinois, to 260 miles at Freeport, Illinois, and from the Linton mines from 213 miles to Bensonville, to 304 miles to Freeport. At the hearing before the Commission rates and distances were shown to ten of the 38 destinations as being representative of the whole. The average distance from the mines on the Milwaukee to these ten destinations was 216 miles from the Clinton district and 260 miles from the Linton district. The average distance from mines in the Central Illinois group to these ten representative destinations is 252 miles, and from the southern Illinois group 373 miles. (Ex. 13, R. 163; Ex. 14, R. 164.) The average distance from mines in the Brazil-Clinton group via carriers publishing rates equal to the former Milwaukee rates is 256 miles, and from mines in the Linton-Sullivan group 286 miles to these ten destinations. The Commission in stating the distances from the Brazil-Clinton group to these destinations included distances via carriers which published higher rates for longer

hauls than did the Milwaukee. (R. 11, 43.) The Commission in its report and order ignored all destinations except Rockford and Freeport, the most distant stations. (R. 11.) Exhibit 7 (R. 149) shows the line of the Milwaukee and the 10 representative stations considered in the exhibits introduced by the Coal Trade Association of Indiana, of which these appellees are members.

We will discuss the facts in greater detail in the course of the argument in showing that there was no evidence to support the findings of the Commission or the order of the Commission, and in showing that the findings and order of the Commission were arbitrary in that the Commission failed to consider material and uncontradicted evidence appearing of record in the proceeding.

Statutes Involved.

The statutes involved are correctly stated by appellants and are set forth as appendices to the briefs filed by appellants.

Summary of Argument.

1. A carrier within the zone of reasonableness prescribed by the statute may adjust its rates so as to obtain or retain desired traffic for its own lines. *Texas & Pacific Ry. Co.* v. *United States,* 289 U. S. 627. The Milwaukee has the legal right to initiate and maintain rates which are no more than reasonable maximum or no less than reasonable minimum, provided those rates do not discriminate against any person, locality or description of traffic, or do not in other ways violate the Interstate Commerce Act. The Act does not take from the carriers the right to initiate and maintain rates which are not prohibited by the Act. There is still managerial discretion in the carriers.

United States v. *Illinois Central Railroad,* 263 U. S. 516, 522.

2. Section 15 (7) of the Act, U. S. C., Title 49, provides for the suspension of rates and charges by the Commission and provides for a hearing concerning the lawfulness of such rates or charges by the Commission, and further provides that "after full hearing the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it (the rate or charge) had become effective." The section further provides that in any such hearing respecting a rate increased after January 1, 1910, the burden of proof, to show that the increased rate or charge or proposed increased rate or charge is just and reasonable, shall be upon the carrier.

The provision for a hearing requires that the Commission consider the evidence and decide in accordance with such evidence. A refusal to consider evidence, or the making of an essential finding without supporting evidence is arbitrary action and an order based thereon is void. *The Chicago Junction Cases,* 264 U. S. 258, 265.

In considering a number of rates the Commission cannot reach its conclusion in respect to all of the rates based upon evidence respecting one or two of the rates, but must consider each of the rates involved. It may reach a conclusion in respect to each of the rates by considering evidence which is typical of the entire situation, if that evidence is shown to be applicable to each of the rates involved. *Beaumont, St. Louis & Western Ry. Co.* v. *United States,* 282 U. S. 76.

At such hearing the Commission can act only upon evidence of record in the particular case before it. A finding without evidence is beyond the power of the Commission and an order based thereon is contrary to law. The Commission cannot predicate a finding or order upon facts assumed to be known to the Commission from any source other than the record in the case in which finding or order

is entered. *Interstate Commerce Commission* v. *Louisville & Nashville Railway Co.*, 227 U. S. 88, 92, 93.

A finding in the language of the statute that the rates of the Milwaukee would be unreasonable and in violation of Sections 1 (5) and 15 (a) (2) of the Act in the absence of supporting findings of fact sustaining such conclusion is not sufficient to support the order requiring the cancellation of the tariff involved. *Florida* v. *United States*, 282 U. S. 194, 213.

3. The order of the Commission is not supported by the evidence. Many of the findings in the report of the Commission are not supported by evidence and some of those findings are contrary to the evidence. In reaching its conclusion the Commission failed to consider material and uncontroverted evidence.

4. The Commission has no power to adjust rates in order to destroy one district or to build up another. *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627.

5. Section 15 (a) (2) of the Act, Title 49, U. S. Code, does not declare any rate or charge unlawful and does not authorize the Commission to fix the rates of one carrier so as to divert traffic to another carrier or group of carriers. The only rates which were in issue before the Commission were those of the Milwaukee, and their lawfulness could be determined only by a consideration of those rates as applied to the service via the line of the Milwaukee, not by a consideration of service via other lines whose rates were not in issue.

ARGUMENT.

I.

A carrier has the right to initiate and maintain any rate which is within the zone of reasonableness prescribed by the Interstate Commerce Act.

The Milwaukee published the rates involved for the purpose of maintaining its traffic from mines in Indiana served by it to 38 destinations on its line in Illinois on the same relative basis as applied to competitive traffic from Illinois mines to those destinations. (R. 74.)

This Court has repeatedly held that carriers have the right to initiate rates, adopting such policy as they deem wise, so long as such rates are within the zone of reasonableness prescribed by the Act and do not violate the provisions of the Act in regard to prejudice, preference or discrimination.

In *United States* v. *Illinois Central Railroad*, 263 U. S. 516, at page 522, decided January 7, 1924, the Court said:

> "A carrier is entitled to initiate rates and in this connection to adopt such policy of rate making as to it seems wise. *Interstate Commerce Commission* v. *Chicago, Great Western Railway Company*, 209 U. S. 108, 118-119. *Southern Pacific Company* v. *Interstate Commerce Commission*, 219 U. S. 433. *Interstate Commerce Commission* v. *L. & N. R. R. Co.*, 227 U. S. 88, 92."

In *Texas & Pacific Railway Company, et al.* v. *United States of America, et al.*, decided May 29, 1933, 289 U. S. 627, 77 L. Ed., page 1410, at page 1421, the Court said:

> "As the carriers are in competition for the business they may, within the zone of reasonableness, prescribed

by the statute, adjust their rates so as to obtain or retain the desired traffic for their own lines. *Interstate Commerce Commission* v. *Alabama Midland R. Co.* (C. C. A. 5th) 74 Fed. 715, 723, 724, 5 Inters. Com. Rep. 685, 168 U. S. 144, 172, 173, 42 L. ed. 414, 425, 18 S. Ct. 45; *Skinner & E. Corp.* v. *United States*, 249 U. S. 557, 564, 63 L. ed. 772, 777, 39 S. Ct. 375; *United States* v. *Illinois C. R. Co.*, 263 U. S. 515, 522, 68 L. ed. 417, 424, 44 S. Ct. 189.

"The theory of the Act is that the carriers in initiating rates may adjust them to competitive conditions, and that such action does not amount to undue discrimination. *Texas & P. R. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197, 40 L. ed. 940, 16 S. Ct. 666, 5 Inters. Com. Rep. 465."

The Commission's ultimate conclusion is that the rates published by the Milwaukee are unreasonable and in violation of Sections 1 (5) and 15 (a) (2) of the Interstate Commerce Act. Section 15 (a) (2) does not declare any rate to be illegal, nor does it define what is a reasonable or lawful rate. That section is merely a direction to the Commission of certain factors to be given consideration by the Commission in prescribing just and reasonable rates. It is obvious that no rate could be in violation of the Section.

Section 1 (5) provides that all charges for the transportation of property shall be just and reasonable, and declares any unjust or unreasonable charge for such service to be unlawful.

The ultimate issue therefore is whether or not the evidence in this case shows that the rates initiated by the Milwaukee are unreasonable and unjust charges for the services rendered by it in the transportation of coal from mines on its line in Indiana to these 38 destinations on its line in Illinois.

II.

In a proceeding under Section 15 (7) of the Act the Commission can enter no order until after a full hearing, and the order entered must be supported by the facts appearing from the evidence in such hearing.

Section 15 (7) of the Act (Title 49 U. S. Code) provides for the suspension of a new rate by the Commission and for a hearing concerning the lawfulness of such rate. After the hearing the Commission is to make such order as would be proper in a proceeding after such rate had become effective. If the new rate seeks to increase the existing rate the burden of proof is upon the carrier to show that the increased rate is just and reasonable.

In its first report the Commission found that the proposed rates "have not been justified." (R. 12.) It treated the case as one in which the burden of proof was upon the Milwaukee. It is clear that under the statute the burden of proof to show a proposed rate is just and reasonable exists only when the new rate is a rate increased since January 1, 1910. Rates may be unlawful which are not unreasonable, *i. e.*, they might violate Section 2 by being discriminatory, or Section 3 by creating an undue prejudice against one person, firm, locality or description of traffic and an undue preference to another person, firm, locality or description of traffic. (Sections 2 and 3, Title 49 U. S. C.) The only other class of rates declared by the Act to be unlawful are those which are higher for a shorter haul included within a longer haul than the rate for the longer haul. (Section 4, Title 49, U. S. C.)

In the case of *Anchor Coal Co.* v. *United States,* 25 Fed. (2d) 462, at page 474, *et seq.,* the Court considered this question fully, and held that the burden of proof was not upon the carrier to justify a reduced rate.

In its second report no mention is made of burden of proof, but in its second order the Commission refers to the first report and makes it a part of the order, and apparently relies upon the alleged failure of the carrier to sustain the burden of proof of showing the suspended rates to be just and reasonable. In this regard the Commission erred.

The provision for a hearing in Section 15 (7) of the Act "implies both the privilege of introducing evidence and the duty of deciding in accordance with it. To refuse to consider evidence introduced or to make an essential finding without supporting evidence is arbitrary action." *The Chicago Junction Case,* 264 U. S. 258, 265.

If there is no evidence to show a rate is unlawful the Commission has no jurisdiction to enter an order in respect thereto. A finding without evidence is beyond the power of the Commission, and an order based thereon is contrary to law and must be set aside. The Commission can not act upon its own information, but must confine its consideration to facts appearing of record by competent evidence. *Interstate Commerce Commission* v. *L. & N. Ry. Co.,* 227 U. S. 88, 92, 93.

It is the duty of the Commission to report the facts and give the reasons on which it reaches its conclusions. The Court will set aside orders which are not supported by adequate findings of fact, which facts must be in turn supported by substantial evidence of record. A general statement in the language of the Act finding that the rate is unreasonable in violation of Section 1 (5) is not sufficient to support an order requiring the cancellation of such rate. *Florida* v. *United States,* 282 U. S. 194, 212, 213.

Where the Commission enters an order affecting a number of rates, such order must be supported by competent evidence as to each of the rates. The Commission can not predicate its order respecting the rates to Elgin and DeKalb and other of the 38 destinations involved on findings

or evidence dealing only with the rates to Rockford and Freeport, the most distant from the mines of all of the destinations involved. If the evidence regarding a number of rates is representative of all of the rates under consideration, the Commission can so state, and can then find in regard to all of the rates. *Beaumont, St. Louis & Western Ry. Co.* v. *United States,* 282 U. S. 76, 82, 83.

The foregoing decisions, we believe, state the general rules applicable to the power of the Commission in respect to entering an order in a proceeding before it. The question in this case, applying those general rules, is whether or not the findings and order of the Commission are supported by substantial evidence of record in this case, and did the Commission fail to consider relevant and material evidence in reaching its conclusion.

III.

The District Court properly concluded that the findings of the Commission are not supported by substantial evidence.

Some of the Commission's findings are contrary to the evidence, and the Commission failed to consider competent, relevant and uncontradicted evidence material to the decision of the issue before it.

The sole issue before the Commission was the lawfulness of the rates published by the Milwaukee for the transportation of coal from mines on its line in Indiana to 38 destinations on its line in Illinois. The evidence introduced by the Milwaukee and by these interveners showed the average length of haul from the mines in each the Clinton and Linton districts via the Milwaukee to ten destinations which, it was testified, were representative of all of the 38 destinations. (R. 90, 95; Exhibits 7, 8, 9, 11, 12, 13, 14; R. 149-164.) The Commission refused to consider the distance via

the Milwaukee from the mines on its line but based its conclusion on the service performed by other carriers serving mines in the same vicinity.

This hearing involved the lawfulness of the rates of the Milwaukee and not the lawfulness of the rates of any other carrier. Section 1 (5) of the Act states that all charges made for any *service* rendered in the transportation of property shall be just and reasonable and every unjust and unreasonable charge for *such service* or any part thereof is prohibited and declared to be unlawful. The rate of the Milwaukee cannot be considered apart from the service which it performs under that rate. The refusal of the Commission to consider the service performed by the Milwaukee, viz. the transportation of coal over its single line for an average distance to these destinations of 216 miles from the Clinton district and 260 from the Linton district for the charge of $1.70 and $1.75 per ton respectively, was arbitrary and a failure on the part of the Commission to consider material evidence.

The Commission's consideration dealt only with the destinations of Rockford and Freeport. However, in considering those destinations, the Commission did not consider the 231 mile haul of the Milwaukee but considered the hauls and service via four other carriers from the Brazil-Clinton group whose service ranged from a transportation of 241 miles to 332 miles over route embracing two or three lines of carriers. (Exhibit 8, R. 149.) No reason was pointed out by the Commission in its report as to why it would be unlawful for the Milwaukee to transport coal from mines on its line in the Brazil-Clinton district to Rockford for $1.70 per ton for its haul of 231 miles merely because the Pennsylvania Railroad charged a rate of $1.87 for the haul via two lines of carriers over a distance of 332 miles to reach Rockford. The legality of the rate of the Pennsylvania was not before the Commission.

The record shows that these rates were published to restore a relationship which had existed for many years between the rates from mines on the Milwaukee in the Clinton and Linton districts and the rates from the central Illinois and southern Illinois groups to these destinations. (R. 77.) The Commission refused to consider or to compare the service performed by the Milwaukee for the rate of $1.70 with the service performed by carriers in serving mines in the central Illinois and southern Illinois groups to these destinations. It condemned as not justified the $1.70 rate of the Milwaukee from the Clinton district for its haul of 231 miles to Rockford when this record shows that 13 of the 15 railroads serving mines in the central Illinois group were hauling coal from that group to Rockford for $1.70 per ton for average hauls ranging from 230 miles to 285 miles and while two of said carriers charged $1.70 for hauls of 199 miles and 201 miles respectively, via the shortest routes available from the Illinois mines. (Exhibit 9, R. 154.) The Commission failed to consider the evidence dealing with the eight representative points other than Rockford and Freeport, to which the rates suspended applied. (R. 11.) It ordered the rate of $1.70 from the Clinton district mines of the Milwaukee to DeKalb cancelled, which rate applied to a haul of 194 miles, while shippers of coal from the central Illinois group pay a rate of only $1.60 to DeKalb for an average haul of 224 miles, the shortest of such hauls being 189 miles and the longest 291 miles. (Exhibit 9, R. 157.) Under its order, it would require the Milwaukee to charge $1.85 for the haul from the Linton district mines on the Milwaukee to Bensonville, a distance of 213 miles, while it permits the shippers in southern Illinois to enjoy a rate of $1.90 for a haul of 359 miles to DeKalb and a rate of $2.00 for a haul of 366 miles to Bensonville. The Commission, in its second report, states that a rate may be unlawful because it is too low, and implies that these rates published by the Milwaukee were lower than reason-

able rates. (R. 37, 38.) In this respect the Commission has failed to consider the innumerable rates shown in this record which are substantially lower, distance considered, than the rates published by the Milwaukee. Exhibit 1 (R. 143) shows rates from Mt. Olive, Illinois, from the mines of one of the protestants, of $1.70 per ton to Rockford for hauls ranging from a minimum of 280 miles to a maximum of 341 miles, as compared with the proposed rate from the Clinton mines on the Milwaukee of $1.70 for 231 miles. The Commission failed to consider the fact that the Milwaukee was obliged to participate in rates of $1.70 per ton from the central Illinois group to Rockford for hauls ranging from a minimum of 199 miles to a maximum of 373 miles. (Exhibit 4, R. 147.)

The Commission failed to consider the comparison of direct hauls from the Illinois groups via single line carriers in comparison with the direct haul of the Milwaukee from the Clinton and Linton districts shown in Exhibit 15, Record 165, 166. For example, to Rockford the single line haul of the Milwaukee from the Clinton district is 231 miles; the suspended rate $1.70; from the central Illinois district the single line haul of carriers serving that district range from 233 miles to 275 miles, and from the southern Illinois district to Rockford for the two lines having direct routes the haul range from 365 miles to 403 miles. The rate of $1.70 for the single line haul of the Milwaukee for 231 miles is not unreasonably low in comparison with the single line hauls from central Illinois of 233, 235 and 278 miles via the carriers having direct lines from that group to Rockford shown in Exhibit 16. (R. 166.)

The Commission failed to consider the fact that the rate of $1.70 published by the Milwaukee applied to its single line haul, while the service from the other carriers serving mines in the Brazil-Clinton and Linton-Sullivan groups in

Indiana and the central Illinois group all involve two or more lines of carriers, except those shown in Exhibits 15 and 16, (R. 165, 166) and such single line hauls from central Illinois and southern Illinois are longer than the haul of the Milwaukee.

There were two sets of rates before the Commission, viz., those from the mines in the Clinton district and those from the Linton district to these destinations. The Commission did not consider any of the evidence relating to the mines from the Linton district other than to name the district and show the rates. The Commission did not consider the fact that the haul from the Linton district to Rockford via the Milwaukee of 275 miles is $1.75 in comparison with average hauls from the southern Illinois group to Rockford of 371 miles for a rate of $2.00 per ton.

The Commission states what the rates from the Brazil-Clinton and Linson-Sullivan groups would be, based on the average distance from those groups to Rockford and Freeport under the scale prescribed by the Commission in the case of *Coal Trade Association* v. *B. & O. R. R. Co.*, 190 I. C. C. 743. (R. 44-45.) It fails to apply that scale to the distance from mines on the Milwaukee in the Brazil-Clinton and Linton-Sullivan groups to Rockford and Freeport and fails to show what the rates would be from central and southern Illinois to those destinations under that scale. The evidence, however, shows that the rates from central Illinois to the 10 representative stations are on the average 82 per cent of the scale prescribed in that case and that if the rates from the Clinton group were based on the same percentage of that scale as the central Illinois rates are of that scale, the rates of the Milwaukee to the average of the 10 stations would be $1.56 in lieu of the $1.70 published by the Milwaukee and suspended by the Commission. The evidence further shows that applying

the central Illinois per cent of rates based on that scale to each of the 10 destinations for the mileage via the Milwaukee the resulting rates would range from $1.43 at Bensonville to a maximum of $1.70 at Freeport, and from the Linton field would range from a minimum of $1.62 at Bensonville to a maximum of $1.83 at Freeport, and on the average would be $1.70. (Ex. 14, R. 164.)

The Commission in its report speaks of disrupting a rate relationship between the Indiana groups as among themselves, and the relationship as between Indiana and Illinois. The Commission has given no consideration to the evidence showing the prevailing relationships in rates to stations in southern Wisconsin as between mines in the southern Illinois and central Illinois groups and the Brazil-Clinton and Linton-Sullivan groups. Exhibits Nos. 22, 23, 24, 25 and 26 show the general differentials applying into Wisconsin. (R. 173, 182.) These exhibits show that as between Brazil-Clinton and southern Illinois group to the seven destinations in southern Wisconsin the average difference in distance is 127 miles, and the average difference in rates is 32 cents as between all the mines in the Brazil-Clinton group and all the mines in the southern Illinois group, and that as between central Illinois and Brazil-Clinton the average difference in distance is 8 miles in favor of Brazil-Clinton, and the average difference in rates is 2 cents in favor of Brazil-Clinton. (R. 99-102.)

To the average of the 10 representative stations shown in this case, the difference between the Milwaukee mileage and that of southern Illinois is 157 miles. Under the suspended rates the difference, the Milwaukee, Brazil-Clinton rates under southern Illinois, would be 30 cents per ton, and as compared to all the mines in the Brazil-Clinton district the difference under southern Illinois would be 116 miles. (Exhibits 13 and 18, R. 163, 168.) Other pertinent

evidence was introduced in regard to the general relationship, but was not considered by the Commission. (See R. 99-102, and the exhibits there referred to.)

The Commission finds that the rate of the Milwaukee will split or disrupt the Brazil-Clinton and Linton-Sullivan groups. The Commission failed to consider the fact that from the Brazil-Clinton group to 3 of the 10 representative stations the carriers published different rates and that from the Linton-Sullivan group to 5 of the 10 representative stations the carriers publish different rates. In other words, the Commission failed to consider the fact that the mines in these so-called groups do not universally take the same rate to common destinations. (See Exhibits 8 and 9, R. 149, 158.)

The Commission in its report states that the evidence shows there has been no greater decline in traffic from Brazil-Clinton and Linton-Sullivan to Rockford since the rate was reduced than suffered by southern Illinois. (R. 9 and 38.) In making this statement the Commission failed to consider the evidence that in 1932 all of the mines in Illinois were closed down by reason of a strike for 5 months (R. 113), while mines in all the Indiana groups were operating during that time. The Commission also failed to consider the fact that the Indiana producers in the Brazil-Clinton and Linton-Sullivan groups had to materially reduce their f. o. b. mine prices in order to sell their coal at Rockford and that they could not continue to do so indefinitely; that it was done to hold business pending an adjustment of the relationship of the rates. (R. 139, 140.)

The Commission failed to consider evidence that the 10 destinations shown in the various exhibits introduced by these interveners was representative of each of the 38 destinations to which each of the suspended rates applied.

The Commission made statements which are not sup-

ported by evidence in this case and predicated its conclusions upon such statements of alleged fact.

The Commission states "the immediate effect of the Milwaukee's proposal would be to split those groups with lower rates from mines on that line than from mines on competing lines in the same group." This statement is true as to some of the stations, but is not true as to others, as shown by Exhibits 8 and 9. The report states repeatedly that the Milwaukee proposed to reduce the rates from the Brazil-Clinton and Linton-Sullivan groups 17 cents per ton. The evidence shows clearly that the Milwaukee's proposal applied only from the mines on its line.

In the second report of the Commission it is stated that the rates from the various origin groups in Illinois are definitely related to each other and that they are generally in conformity with the findings in the *Illinois Coal Cases*, 1920. There is no evidence of record to sustain that statement.

In its second report the Commission states what purports to be allegations in a complaint filed with it respecting the reduction of rates in Illinois in the *13th Section Case*, 182 I. C. C. 537. (R. 37.) There is no evidence in this record as to what the allegations were in that complaint or what evidence was introduced in that case other than the evidence introduced in this record showing that certain statements made by the Commission in its report in the 13th Section Case, *Intrastate Rates on Bituminous Coal in Illinois*, 182 I. C. C. 537, were erroneous. This evidence appears at pages 96 to 99, inclusive, of the record in this case.

The Commission in its report states that the Milwaukee introduced evidence in the *13th Section Case* to the effect that the Illinois rates were too low. (R. 37.) There is no evidence in this record that the Milwaukee introduced any

evidence in the *13th Section Case,* or to show that any carrier testified that the Illinois rates were too low.

The Commission states that the increase of tonnage of coal from the Springfield group to Rockford resulted from the distribution of coal for relief purposes at Rockford. (R. 38.) The evidence, however, shows that there was a substantial increase in the shipment of coal from the Springfield, or the central Illinois group, to Rockford in 1931 and 1932 over 1929, but does not show that it was because Springfield coal had to be used for relief purposes. The evidence was that cheap coal was used for relief purposes, and that Springfield coal was a cheap coal and was used for relief purposes. The evidence did not show the mine price of the Springfield coal in comparison with the mine price of Clinton, Indiana coal. There is nothing in the record to support the Commission's statement that the rate had nothing to do with the increase in the shipments from the central Illinois group. In this connection it might be pointed out that the record shows that the southern Illinois operators were selling their coal uniformly at a price of $2.25 per ton f. o. b. mines, while coal from the Brazil-Clinton and Linton-Sullivan districts of the same size was being sold as low as $1.40 per ton f. o. b. mines. (R. 111.)

The Commission finds that the result of the Milwaukee rates will be to split the Brazil-Clinton group and the Linton-Sullivan group, and will disrupt the long existing differential relationship between the Indiana groups. (R. 40.) The record is silent as to what the relationship is as between those groups as to 36 of the 38 destinations involved. The record shows that from the Princeton group to Rockford two rates are in effect via different carriers serving that group. (R. 76.) The Commission makes the above findings without any evidence to support them. The state-

ments in the record in regard to the usual differentials do not afford a basis for a finding of fact that such differentials prevail at any specific point.

There is no evidence and no finding that the groupings as they now exist are just and reasonable. There was no evidence and no findng that the so-called differential relationship between the groups is just and reasonable. Those questions were not in issue in this case. The record shows that the question of relationship as between the various Indiana groups on the one hand and the southern Illinois group on the other was pending before the Commission in regard to rates to Wisconsin, Iowa and Minnesota. (R. 102.) The Commission, in the absence of any evidence that the present groups, which it assumes to exist, are reasonable, finds that it would be unlawful for the Milwaukee to publish a rate lower than other carriers serving such groups.

In this connection we desire to point out that the affirmative evidence shows that the grouping that exists is purely the result of voluntary action on the part of the carriers serving mines in a given vicinity; that so far as the Indiana groups are concerned, some carriers meet a competitive rate to one destination, and not to another. (Exs. 8 and 9, R. 149 *et seq.*)

The evidence shows that the publication by the Milwaukee of a lower rate to these destinations is not unfair to the other carriers serving mines in the same groups. It cannot be said to be unfair to the Pennsylvania Railroad for the Milwaukee to publish a rate of $1.70 for its 231-mile haul from Clinton district to Rockford, when the Pennsylvania charges $1.87 for its 332-mile haul from its Brazil-Clinton mines to Rockford. It is no undue hardship on the Monon Railroad for the Milwaukee to publish a rate of $1.75 per ton from Linton district mines to DeKalb, a distance of 238

miles, as compared with the Monon's rate of $1.79 for 292 miles to DeKalb, or the rate of the Illinois Central of $1.79 for its haul of 323 miles to DeKalb. (Ex. 8, R. 154.)

Where carriers serving Brazil-Clinton publish the same rates as formerly published by the Milwaukee, the average distance of the hauls to the 10 destinations shown in Exhibit 8 (R. 149) is 256.3 miles. (See Table I *supra.*) This is 40 miles more than the average haul via the Milwaukee. The difference in the average rates of those other carriers to the 10 stations and the suspended rate of the Milwaukee is 10.8 cents per ton. On the average, the service is more than 18 per cent greater than the Milwaukee service, because the distance is 18 per cent greater plus the two and three-line hauls via the other carriers. The average rates of the other carriers are only 6 per cent greater than the suspended rates of the Milwaukee.

It is manifest that when the Commission states that the suspended rates will disrupt the Brazil-Clinton group it gave no consideration to these facts. Its report shows that those facts were not considered.

From the Linton-Sullivan group, common rates were published by all six carriers to five of the 10 representative points—while to the other five points one to four of the six carriers publish rates that are different than the old rate of the Milwaukee. Where other carriers published the same rates as the former Milwaukee rates, the average distance via their routes to these ten stations is 286.3 miles, while via the Milwaukee the average distance is 260 miles. The distance via the other carriers is 10 per cent greater than via the Milwaukee, the suspended rate of the Milwaukee is only 5.8 per cent less than the average rates of the other carriers.

These facts cannot have received consideration by the Commission in reaching its conclusion that the suspended

rates would unlawfully disrupt the Brazil-Clinton and Linton-Sullivan groups.

The Commission throughout its reports states and reiterates that the rates in this Indiana-Illinois territory are low rates. There is no evidence in the record to support that statement. One witness testified that all of the rates in this territory were less than reasonable maximum rates but that is not evidence that they are unduly low. Statements made by the Commission in other cases are not evidence in this case, and under the rule laid down by this Court, cannot be considered by the Commission in deciding this case. The Commission cannot go to general statements made in its decisions in other cases to sustain its order in this case. *Interstate Commerce Commission* v. *L. & N. Ry. Co.*, 227 U. S. 88, 92-93.

The Commission says: "* * * the proposed rates, compared with rates recently prescribed for like distances in this general territory, would be unreasonably low." (R. 45.) This statement is contained in a paragraph comparing the $1.70 and $1.75 rates published by the Milwaukee with the rates that would result under a scale of rates prescribed as reasonable maximum rates from Indiana mines to destinations in the central eastern portion of Illinois (Docket 23922, *Coal Trade Association* v. *B. & O. R. R. Co.*, 190 I. C. C. 743), to the average distance via all carriers serving mines in the Brazil-Clinton and Linton-Sullivan groups to Rockford and Freeport. The Commission did not apply that scale to the distances via the Milwaukee. The Commission failed to consider the rates from the southern Illinois group to Rockford and Freeport or from the central Illinois group in comparison with that scale, although such comparisons were in evidence (Exs. 13, 14, 18, R. 163, 164, 168) in respect to each of the ten representative stations shown in evidence.

The Commission goes outside of the record to compute a possible loss of revenue to carriers which would follow a reduction of 12 cents per ton in the rates to Chicago. (R. 43.)

The Commission in its second report quotes from testimony of witness DeCamp (R. 127 and 129) to support its first report that dire consequences would follow if the suspended rates of the Milwaukee became effective. Mr. DeCamp prefaced his statement by referring to Exhibit 40 (R. 215), saying: "Now, the second column I want to direct particular attention to. That visualizes what the future *may hold and what we fear.*" (R. 129.) He further said: "I show them as standard rates in this exhibit *because I firmly believe* that if these reductions are confirmed and approved by the Commission, the ink will not be dry upon the order vacating the suspension before tariffs of competing lines in the same districts will be issued making the same reductions."

Again this witness said: "Why, it will only be a matter of time, *as I see it,* in such event before the Princeton and Boonville groups will follow with similar reductions." Again he said: "Now, *if it should happen, which in all probability may be,* all of Indiana goes down 17 cents, how long would it be before drastic requests and strong pressure would be exerted upon Illinois roads to make a similar reduction? *Now, if that were done, which is possible,* it would produce lower rates to Freeport and Rockford from the large originating groups in Illinois than apply to Chicago. For illustration, southern Illinois to Rockford and Freeport is $2.00. A 17-cent reduction would make $1.83 versus the Chicago rate of $1.95. There are routes from southern Illinois to Rockford and Freeport which apply via Chicago." (R. 129).

That is all that is in this record on the subject that other rates from Indiana would be reduced, or that Illinois rates would be reduced, or that rates to Chicago would be reduced. It is not evidence of any fact. It is a statement of what the witness feared might possibly happen. It is not substantial evidence. Yet on the basis of those loose general statements, plus data not of record in this case, the Commission states that if the Chicago rates were reduced the carriers would lose $1,400,000 a year in revenue. (R. 43.) On the basis of those statements the Commission finds that the suspended rates would disrupt the rate structure on coal in Indiana and related areas, thus impairing the revenues of the carriers serving those areas, and their ability to provide adequate and efficient transportation. (R. 46, 47).

The fears of this witness or the belief of this witness do not constitute evidence of facts upon which the Commission can predicate a finding that these rates are unlawful. Nowhere does this witness state that the Illinois Central Railroad, the only carrier for which he appeared, would reduce its rates from the Linton-Sullivan group. He did not state that any responsible officer of any carrier had said that the rates of such carrier would be reduced.

It is clear that these statements of witness DeCamp were pure speculation and surmise. The general rule in regard to such evidence is stated in 22 Corpus Juris, page 640, paragraph 735, as follows:

> "*Conjecture Excluded.* While absolute certainty is not required of an expert, his judgment must involve the element of such mental certainty on the part of the witness as will render it of real aid to the jury. Accordingly, no matter how skilled or experienced the witness may be, he will not be permitted to guess or to state a judgment based on mere conjecture. * * *"

In the case of *Kimbrough* v. *Chicago City Railway*, 272 Ill. 71, 75, *et seq.*, the court said:

> "It is clear that the evidence thus elicited and objected to by plaintiff in error is purely speculative evidence,—that is, the conjecture of the witness as to consequences that are mere possibilities,—and was therefore incompetent. * * * Mere surmise or conjecture cannot be regarded as proof of an existing fact or of a future condition that will result. Expert witnesses can only testify or give their opinion as to future consequences that are shown to be reasonably certain to follow."

In the case of *Lyons* v. *Chicago City R. Co.*, 258 Ill. 75, 81, it is said:

> "While it is often difficult to draw the line between legitimate inference and bare conjecture, only such inferences may be drawn as are rational and natural. Mere surmise or conjecture is never regarded as proof of a fact and the jury will not be allowed to base a verdict thereon."

In *Kern* v. *Snider*, 145 Fed. 327, 329, the court said:

> "Mere conjecture will not sustain verdicts. They must be founded on evidence which convinces the mind. They can not rest on mere guess or speculation. * * * Verdicts can be based only on reasonable probabilities. Mere possibilities can not establish probability. * * * There must be sufficient evidence to remove the question from the realm of mere conjecture."

It is clear from the statements in the above cases that the surmise and guess of witness DeCamp as to what might happen, or the possibility of the Illinois rates being reduced were so remote from any facts shown in the case or stated by the witness that they amount to pure conjecture and surmise, and in a law court would have been excluded as incompetent.

There was not one word in the evidence that if reductions were made in the Illinois and Indiana, the revenues of the carriers serving Illinois and Indiana would be impaired. Such reductions might increase their revenues by

inducing a substantially greater movement of Illinois and Indiana coal. As this Court said in *Florida* v. *United States,* 282 U. S. 194, 214:

> "The raising of rates does not necessarily increase revenue. It may in particular localities reduce revenue instead of increasing it, by discouraging patronage."

There is no evidence that the reduced rates of the Milwaukee will impair the revenues of it or other carriers, or impair the ability of the Milwaukee or such other carriers to provide adequate and efficient transportation. The Commission in its brief in this case does not attempt to point out any evidence to support this finding.

The statement by the Commission that the suspended rates would be lower than rates in Illinois which it had stated were below the reasonable level of rates is not correct. The suspended rate of $1.70 is not lower than any of the Illinois rates to these destinations. As applied to the Milwaukee, and they are only applicable via the Milwaukee, those rates are higher mile for mile than the average of the rates from the central Illinois group to any of the destinations. (Exs. 8 and 9, R. 149 et seq., Tables I and II, *supra.*)

The failure of the Commission to consider competent, material and unquestioned evidence, and its statements and findings which are not supported by evidence of record we submit required the Court to set aside the order of the Commission in this case.

IV.

The Commission has no power to adjust rates so as to destroy one district or to build up another.

In the case of *Texas & Pacific Ry. Co.* v. *United States,* 289 U. S. 627, it is said:

> "While carriers may meet competition by equalizing rates, or maintaining differentials * * * they may

> not adjust their rates with the motive of injuring or aiding a shipper, a particular kind of traffic, or a locality * * *. A tariff published for the purpose of destroying a market or building up one, or for diverting traffic from a particular place to the injury of that place, or in aid of some other, is unlawful; and obviously what the carrier may not lawfully do, the Commission may not compel."

Applying that doctrine to this case, the Commission may not compel the Milwaukee to continue to publish rates on a higher level than the rates from competing coal fields and so prevent shippers on the line of the Milwaukee from selling their coal at these 38 destinations and permit Illinois producers to monopolize those markets.

The Commission may not compel the Milwaukee to charge $1.87 per ton for its average haul of 231 miles to Rockford, because the Pennsylvania Railroad charges that rate from mines in the same vicinity for its 332-mile haul.

The Commission may not compel the Milwaukee to charge $1.87 rate to Freeport from Brazil-Clinton in order that central Illinois mines can market their coal there, on a rate of $1.70 for an average haul of 261 miles. To Elgin the Commission cannot compel the Milwaukee to maintain a rate of $1.80 for its haul of 188 miles while central Illinois enjoys a rate of $1.70 for an average haul of 249 miles or southern Illinois a rate of $2.00 for an average haul of 377 miles. (Exs. 8 and 9, R. 149 et seq.)

The effect of the order of the Commission would be to bring about the destruction of the market for coal from the mines of these interveners at these destinations, and hand those markets to central and southern Illinois. This is the very thing which the language of this Court, above quoted, condemns.

V.

Section 15 a (2) of the Act does not empower the Commission to order the cancellation of a suspended rate which does not violate some other provision of the Act.

As we have heretofore shown, Section 15 a (2) of the Act (Title 49, U. S. C.), does not declare any rate to be unlawful. It is a direction to the Commission to consider certain factors in prescribing just and reasonable rates. The first factor to be considered is "the effect of rates on the movement of traffic."

The evidence in this case is that the Indiana operators could not continue to reduce their prices to these markets so as to absorb the rate differences brought about by the reductions in the Illinois rates. (R. 139, 140.) These suspended rates are necessary if the Milwaukee is to continue to move this traffic. The Commission has ignored this factor as applicable to the Milwaukee.

The second factor is: "the need, in the public interest, of adequate and efficient railway transportation at the lowest cost consistent with the furnishing of such service." These interveners have an interest in the Milwaukee being in a position to furnish adequate service. The public at these destinations have an interest in having these rates effective. If these interveners cannot ship coal to these destinations, and the Milwaukee is deprived of the revenue it could secure for its single line haul to these destinations, it may seriously handicap that road in furnishing service to other destinations. But this second factor surely means that the carrier should furnish adequate service at the lowest possible cost to all destinations served by such carrier. If these interveners are subjected to rates under which they can not ship to these 38 destinations; if the

rates are higher relatively than other rates to the same destinations they are not being furnished service at the lowest possible cost, because so far as this record shows, the other carriers are furnishing adequate service under lower rates. There is no evidence in this record that the suspended rates are not consistent with the Milwaukee furnishing adequate service.

The third factor is "the need of revenues sufficient to enable the carriers * * * to provide such service." Again this must be read as applying to the carrier or carriers whose rates are to be prescribed. There is no evidence that the suspended rates will not provide the Milwaukee with sufficient revenue to provide the service to these destinations.

The change made in Section 15 a (2) by the Emergency Transportation Act of 1933 is important. Under that section in the 1920 Act the Commission was directed to fix the measure of rates so that the carriers as a whole or as a whole in such rate groups as the Commission might establish could earn a net income which would be a fair return upon the property value of such carriers.

The former Section 15 a (2) was part of the recapture of earnings plan which dealt with the carriers as a whole. The carriers were to receive a fair return upon the value of their property devoted to transportation service, and the Act imposed a duty upon the Commission to fix rates to accomplish that purpose.

The present provision is merely a direction to the Commission to consider certain factors in prescribing rates. No longer is there a basis for taking from one carrier to give to another in order that the carriers as a whole may earn a certain return upon their investments.

The Milwaukee has the right to exercise its managerial

judgment in the publication of rates necessary to retain traffic, so long as those rates do not violate some positive inhibition of the Act. The Commission can not cancel such rates under any theory that they would prevent other carriers earning a sufficient revenue. The evidence in this case shows that the Milwaukee has in the past transported over 95 per cent of the coal from Brazil-Clinton and Linton-Sullivan groups to these destinations, so it is clear that the other carriers serving those groups would not be materially affected by the reduced rates of the Milwaukee. In fact, such other carriers would not be affected at all. It is evident that no coal will move from those groups under a permanent arrangement of rates, central Illinois from 14 to 17 cents per ton less than Brazil-Clinton, and southern Illinois only 13 to 20 cents per ton higher than Brazil-Clinton. Other carriers serving Brazil-Clinton and Linton-Sullivan groups will not be any more deprived of revenue by the Milwaukee hauling coal from its mines in those groups than by the carriers serving the Illinois groups hauling Illinois coal to these destinations.

The statement of this Court in the case of *Florida* v. *United States*, 292 U. S. 1, 7, that the changes in Section 15 a (2) did not show an intention to relax the control of the Commission over intrastate rates, does not hold that the Commission can prescribe rates for one carrier in order that other carriers can maintain or increase their revenues.

The report of the House Committee appearing in the footnote on page 7 of that decision shows that in following the directions in Section 15 a (2) the Commission can only give consideration to facts of record, and that Congress assumed that the Commission would develop sufficient facts on the record in regard to the factors specified so as to be in a position to act.

It is manifest that the record in this case is devoid of any evidence upon which the Commission could predicate a finding that the rates of the Milwaukee would detrimentally affect any of the factors mentioned in Section 15 a (2).

VI.

Analysis of argument for appellants.

The brief for the Railroad appellants argues that the Commission ordered the rates of the Milwaukee cancelled because they were less than reasonable minimum rates. It is stated, page 23:

> "There was no contention that the proposed rates of the Milwaukee were so low that they would not yield sufficient revenue to compensate it for its services in rendering transportation thereunder. * * * One of the principal issues of law, therefore, is whether proposed reduced rates which would precipitate a general reduction in a rate structure not unreasonably high, and result in the unnecessary dissipation of the carriers' revenues and impairment of their ability to render adequate and efficient transportation service are unlawful and can be prohibited by the Commission."

This statement admits that there was no evidence that the rates of the Milwaukee in and of themselves were less than reasonable minimum rates.

In the case of *Texas & Pacific Railway Company* v. *United States*, 289 U. S. 627, this Court made the following statement in respect to minimum rates:

> "The evidence fails to show that the rates of the Texas & Pacific and the L. R. & N. on export shipments to and from New Orleans were not compensatory. The Commission refused to find that they were so low as to cast a burden on other traffic. There was therefore no basis for an order fixing minimum reasonable rates under Section 15 (1) of the Act."

It is stated by the Railroad appellants that there was no evidence in this case that the rates of the Milwaukee were not compensatory. There was no evidence in this record that the rates were so low as to cast a burden on other traffic of the Milwaukee. In fact the evidence is that the maintenance of the higher rates would deprive the Milwaukee of revenue from the transportation of coal from mines on its line in Indiana to these destinations and the inference is that being deprived of such revenue a burden would be cast upon its other traffic.

The Commission attempts to work out in its second report a complicated series of possible results in order to justify its order requiring the cancellation of these rates. Briefly what the Commission has evolved is as follows: Other carriers serving mines in the same groups *might* reduce their rates; *if* other carriers in the same groups reduce their rates, carriers serving the more southerly groups in Indiana *might* reduce their rates; *if* the carriers serving the more southerly groups in Indiana reduce their rates the shippers of coal in Illinois *might* seek reductions in the rates from the Illinois groups to these destinations; *if* the Illinois shippers were able to persuade or force the Illinois carriers to reduce their rates to these destinations the resulting rates *might* be less than the rate to Chicago; *if* the resulting rates to these destinations were less than the rates to Chicago the rates to Chicago *might* be reduced; *if* all of these things occurred, the revenues of the carriers serving Illinois would be materially reduced.

On the basis of these remote possibilities the Commission states that the revenues of the carriers would be dissipated and their ability to render adequate and efficient transportation service impaired. Appellants follow this same line of reasoning in stating the principal issue of law above quoted. They omit to consider, however, that if all

the dire consequences which they have conjured up occurred, still this record is void of any evidence that these possible reductions would impair the revenue of the carriers serving Illinois or would impair their ability to render adequate and efficient transportation service. It is quite possible that with lower rates in this territory these carriers would transport more coal and thus increase their revenues.

We do not question the power of the Commission in proper cases and upon proper evidence to exercise the minimum rate-making power conferred on it by the Act, but that power can only be exercised when the facts appearing of record in a given case warrant it. A study of the decisions of the Commission and of this Court show that the minimum rate power has been exercised in removing discrimination resulting from undue preference to one locality or shipper and undue preference to another.

It is not claimed by appellants that the rates of the Milwaukee unduly preferred any person, locality or description of traffic or unduly discriminate against anyone. As stated in the case of *Texas & Pacific Ry. Co.* v. *United States,* 289 U. S. 627, 647, *et seq.*, dealing with discrimination:

> "The reason for the doctrine is that preference or prejudice can be found only by the comparison of two rates. If these are the rates of one carrier to point A and that of another to point B while a relationship of one to the other may be determined neither the first nor the second carrier alone can be held to have created the relation. Assuming that neither rate is unreasonable, the one carrier cannot be compelled to alter its rate because the other carrier's is higher or lower for the same service. A carrier or group of carriers must be the common source of the discrimination—must effectively participate in both rates, if an order for correction of the disparity is to run against it or them. Where an order is made under section 3 an alternative

must be afforded. The offender or offenders may abate the discrimination by raising one rate, lowering the other, or altering both."

It is clear that the Milwaukee does not discriminate in its rates under the definition of discrimination above given. In the intra-state cases which have been passed upon by this Court, the minimum rate-making power has been exercised to prevent a discrimination in intra-state rates against inter-state rates. In the case at bar there is no question of discrimination involved.

Appellants cite the decision in *Jefferson Island Salt Mining Co.* v. *United States,* 6 Fed. (2d) 315, 319, where it is stated:

> "It was not necessary that the Commission should first have found the Detroit to Chicago rate or the Louisiana to Chicago rate was non-compensatory in order that a higher minimum rate might be prescribed, if in fact, as the Commission was justified in finding, proper rate relationships between different carriers and localities could not otherwise be established or ruinous rate wars threatening the ability of the Commission to fix rates as a whole or in groups, which would permit the earnings prescribed in Section 15 (a) could not otherwise be avoided."

If the Commission may fix minimum rates to maintain or create proper relationships between competitive carriers, where there is no discrimination, then the rule enunciated by this Court in *Texas & Pacific Railway Company* v. *United States,* 289 U. S. 627, above quoted, must be changed for, whether the carrier participated in the discrimination or not, the Commission could adjust rates for the carrier serving point A and the carrier serving point B under its assumed power to fix proper rate relationships between different carriers and localities. We submit that this is not a power accorded to the Commission under the Act.

The case of *Mississippi Valley Barge Line Co.* v. *United States,* 292 U. S. 282, did not challenge the minimum rate power. In that case the only thing before the Court was the order of the Commission. The evidence before the Commission was not introduced in the suit in the District Court. The decision in this Court was that the order of the Commission could not be assailed in the absence of the record before the Commission to show whether the evidence therein supported the order. It is significant in that case, however, that the Commission suspended the rate and in the exercise of the minimum rate power fixed a minimum rate different from that published by the carriers. In the case at bar, the Commission did not exercise its power to establish a minimum rate; it merely ordered the Milwaukee to cancel its rate which had been suspended. In the case, *United States* v. *Illinois Central Railroad Co.,* 263 U. S. 515, cited by Railroad appellants, the Illinois Central Railroad participated in the discrimination because it participated in the transportation from both sets of origin points. That case is far from holding that the Commission may refuse to permit the publication of a rate that is not unreasonably low in order that competing carriers may continue to enjoy traffic on a lower basis than the published rate of some other carrier.

At page 35, *et seq.,* of the Railroad appellants' brief, reference is made to other cases before the Commission in which references to the Illinois-Indiana rates are made. These cases are referred to to show that the Commission was informed as to the rate adjustment in this territory, and, the inference is, acted upon information acquired from its decision in those other cases.

This Court stated the law in this respect in its decision in *Interstate Commerce Commission* v. *L. & N. Ry. Co.,* 227 U. S. 88, 93:

"In such cases the Commissioners cannot act upon their own information as could jurors in primitive days. All parties must be fully appraised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal. In no other way can a party maintain its right or make its defense. In no other way can it test the sufficiency of the facts to support the findings; for otherwise even though it appeared that the order was without evidence, the manifest deficiency could always be explained on the theory that the Commission had before it extraneous, unknown, but presumptively sufficient information to support its findings. *U. S.* v. *B. & O. S. W. R. R. Co.*, 226 U. S. 14."

Applying that rule to this case, the Commission cannot supply the deficiency in the evidence in this record by considering "extraneous, unknown, but presumptively sufficient information to support its findings."

We have discussed the finding that the proposed rates would split the origin groups and have shown that to many of these destinations different rates are published from mines in the same group, at the present time. It is manifest that if different rates are published from the same group there is not a fixed relationship between the rates from some other group because there is no standard on which such differential could be predicated. For example, the rates of the C. & E. I. and Big Four railroads to Forreston, Illinois, are $1.85 per ton from the Linton-Sullivan groups; via the Monon, Illinois Central and Pennsylvania the rates are $1.92 per ton. The Commission says that the rates from Princeton are 7c higher than the rates from Linton-Sullivan. It is impossible to state whether the rate from Princeton to Forreston, therefore, would be $1.92 or $1.99 per ton. The same situation applies to other of these groups, as shown in Exhibits 8 and 9 (R. 149 *et seq.*)

and is clearly demonstrated in Tables I and II, *supra*. The evidence of witness DeCamp, as we have pointed out above, is wholly the fears of the witness as to what might possibly happen; it is not that substantial evidence which this Court has held is necessary to support a finding of the Commission. The District Court used the expression that it was not entitled to much weight; in other words that it was not substantial evidence upon which to predicate a finding.

The statements in the briefs and in the report of the Commission in regard to disrupting rate relationships entirely ignores the fact that the relationships were disrupted by the reduction in the Illinois rates, and that the suspended rates of the Milwaukee restored, so far as that line was concerned, the relationships which had existed for many years prior to August, 1930. It is not a case of disrupting relationships, but of restoring relationships which had existed for many years. The statements made at pages 43 and 44 of Railroad appellants' brief regarding the proceedings before the Illinois Commerce Commission and subsequent proceedings before the Interstate Commerce Commission are not of record in this proceeding. The only evidence in regard to the so-called *13th Section Case*, 182 I. C. C. 537, is that the statement by the Commission in that report to the effect that the rates from Indiana were lower than the rates from Illinois was predicated upon an error in comparatives. The Commission, in its decision in this case, corrects the comparisons, but does not correct the erroneous conclusion it reached and reiterates that erroneous conclusion as a grounds for sustaining its order in this case.

The fact that the Illinois operators intervened in the proceeding before the Commission in an attempt to

retain the benefit of the lower Illinois rates as against these interveners, does not support the finding that the Illinois rates will be reduced upon the suspended rate becoming effective. At pages 45 and 46 of Railroad appellants' brief the appearance of parties is treated as evidence that a reduction in Illinois will follow the Milwaukee's rates becoming effective.

There is no foundation for the assumption that the Milwaukee rates of $1.70, which were suspended, for hauls from the Brazil-Clinton group to these destinations, ranging from 169 miles to 260 miles, would force reductions in the rate of $1.70 from central Illinois to Rockford, for example, for hauls ranging from 199 miles to 298 miles. No evidence is presented as to why the rate of the Milwaukee of $1.70 for its 194-miles haul to DeKalb would force a reduction in the present rate of $1.60 to DeKalb from the central Illinois group, where the hauls range from 189 miles to 291 miles. The possibility that such reductions would occur in Illinois is too remote to merit any consideration.

There is nothing in evidence to warrant the discussion of the possible loss of revenues to the Illinois carriers by reason of the remote possibility of rates to Chicago being reduced.

The findings of the District Court in this case were based upon a study of the record. The statements of the Court in respect to the testimony of witness DeCamp is in accordance with the law that an expert witness must testify to opinions founded upon facts or scientific observations and not upon his fears or beliefs. If such statements as those of Mr. DeCamp are to be accepted by the Commission, all that would be necessary in any case to block a reduction in rates is for some witness to testify that he feared it would bring about a rate war or if the reduced rate became

effective he believed other carriers would reduce their rates. As we have above pointed out, Mr. DeCamp did not testify that the railroad he represented, the Illinois Central, had determined to reduce its rate from the Linton-Sullivan group in the event the Milwaukee rates became effective.

The argument in railroad appellant's brief in regard to the disruption of groups and the loss of revenues to carriers is, we submit, fully answered in what we have said, *supra*, on this subject. Statements like that of the witness Malum (R. 127) that he did not think there was any question but that the reduction would spread to other railroads serving the Indiana groups is not competent evidence of a fact. Mr. Malum did not qualify as an expert so as to give any weight to his expression of opinion. The statement by Mr. Waffle that he believed that the other Indiana groups were entitled to like reductions is not evidence that there will be such reductions from such other groups.

In regard to the loss of traffic we have heretofore shown that the Commission ignored evidence that in 1932 the Illinois mines were closed down for five months by reason of a strike, while many of the Indiana mines were operating and, further, that the Commission ignored the evidence that these interveners reduced their prices in order to continue to supply coal at Rockford, and that they could not continue such reduction in price if the rate adjustment was to be permanent on the basis in which it was left by the Commission after its decision in *Intrastate Rates in Illinois*, 182 I. C. C. 537.

The District Court did not substitute its judgment for the judgment of the Commission. It merely held that the statements made by witness DeCamp, upon which the Commission predicated its findings, were not competent evidence to support those facts. As was said by this Court in the

case of *Interstate Commerce Commission* v. *L. & N. R. R. Co.*, 227 U. S. 88, 92:

> "The Commission's right to act depends upon the existence of this fact, and if there was no evidence to show that the rates were unreasonable, there was no jurisdiction to make the order * * *. The legal effect of evidence is a question of law."

The legal effect of the statements of witness DeCamp was a question of law properly passed upon by the District Court, and it properly held that such statements did not constitute substantial evidence upon which to predicate a finding by the Commission.

Appellants argue that the District Court was in error in disregarding the highly competitive nature of the rate adjustment involved and its history. As pointed out, the Commission went to sources outside of this record in a large measure for developing the theory of the highly competitive rate adjustment in this territory. This record does not contain evidence upon which to base such a finding in that regard.

The only evidence of the rate adjustment in this record is that to these northern Illinois destinations the rates from central Illinois group and from the Brazil-Clinton group had for years been the same, and from both of those groups had been 30 cents per ton less than from southern Illinois. The evidence showed that to destinations in southern Wisconsin, the difference in rates was, central Illinois, 30 cents per ton under southern Illinois, and Brazil-Clinton to some of those stations the same as central Illinois and to stations in southeastern Wisconsin 5 cents per ton less than from central Illinois. The evidence further showed that the differences in distances as between Brazil-Clinton, central Illinois and southern Illinois to these Wisconsin destinations was practically the same as to the destinations

here involved. (R. 99-101, Exs. 22, 23, 24, 25 and 26; R. 173-182.)

Appellants criticize the statement in the opinion of the District Court to the effect that it is unquestioned but that the Milwaukee is in a position to serve the mines in the Brazil-Clinton and Linton-Sullivan groups which are on its lines at a much cheaper rate than other carriers whose lines touch coal mines in the same vicinity, and more cheaply than lines in Illinois can serve the southern Illinois and the Springfield groups to Rockford and Freeport. Appellants say there was no evidence with respect to the cost to the Milwaukee or other carriers in handling coal; that it did appear that the Milwaukee had a single route from its mines and that the distances from those mines are shorter than the distances from other mines, but these are by no means the only elements in the cost of transportation.

In this record the measure of distance and the fact that the Milwaukee had a single line haul while the other carriers serving the Brazil-Clinton and Linton-Sullivan groups had a two or more line haul was the only evidence regarding transportation conditions offered. In view of this evidence the District Court was fully justified in stating a fact that from the evidence was obvious. It is true that the Commission wholly ignored the service of the Milwaukee in connection with the rates which it published, a fact which in and of itself is sufficient to cause the court to set aside the order of the Commission requiring the cancellation of the Milwaukee's rates.

Appellants argue that the fact that the Milwaukee might serve the mines on its lines to these destinations at a cheaper rate than other carriers in the group could serve mines on their lines to the same destinations is immaterial. They argue that the question does not depend upon the in-

trinsic reasonableness of the Milwaukee's rates, but whether the publication of such rates would have a tendency to cause other carriers to reduce their rates, citing a decision of the Commission, *In re Lake Iron Ore from Chicago to Granite City*, 123 I. C. C. 503, 504, to the effect that the Commission had authority to condemn a proposed rate if the evidence warrants the conclusion that such rate would tend to precipitate changes in a rate structure or in traffic which will be harmful in the public interest under Section 15 a of the Act as amended in 1920.

Whatever the responsibility of the Commission may have been under Section 15 a of the Act as amended in 1920, it does not have that same responsibility today. The fact that the Commission may have misconceived its authority does not affect the law. As was said in the case of *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627:

> "Where a statutory body has assumed a power plainly not granted, no amount of such interpretation is binding upon the courts. *Interstate Commerce Commission* v. *C. N. O. & T. P. Ry. Co.*, 167 U. S. 479, 510."

Appellants criticize the statement of the District Court that there was no evidence in the record that the present rate structure is fair, or that it is reasonable; no evidence that its dissolution would necessarily lead to the introduction of unfair or unreasonable rates. Appellants do not in that connection point to any evidence in regard to the fairness of the rate structure, or that the rate structure is reasonable, or that its dissolution would lead to the introduction of unfair or unreasonable rates. Appellants content themselves with saying that the Milwaukee conceded that the rates were less than reasonable maximum rates. The District Court properly stated that if some other carrier undertook to publish a rate that was unlawfully low, the Commission could act in respect to such rate, but that

it cannot prohibit the Milwaukee from publishing a rate that is not less than a reasonable minimum rate merely because some other carrier might later do so.

The District Court properly found that the order of the Commission was unfair and discriminated against the Milwaukee, and it also discriminated against these interveners. No greater discrimination can be conceived of than where a carrier is compelled to maintain rates under which traffic will not move in order that competitive carriers may transport traffic from competitive points to a given destination at relatively lower rates. No greater discrimination can be created than an order of the Commission requiring a carrier to maintain higher rates for a lesser service than is enjoyed by competitors when such rates are so high as to prevent the shipment of freight. An examination of the various exhibits and evidence in this case shows that the Commission would have compelled the Milwaukee to publish rates averaging $1.808 to these destinations for hauls from its Clinton district averaging 216 miles, while carriers serving the central Illinois group publish rates which average $1.69 per ton for hauls which average 252 miles. That is a gross discrimination. To compel the Milwaukee to publish rates to these destinations which average $1.858 per ton from its Linton district for average hauls of 260 miles, while the carriers serving southern Illinois maintain rates that average $1.99 per ton for hauls that average 373 miles to these destinations is a discrimination, and is unfair both to the Milwaukee and to these interveners. The evidence shows that under the rates to Rockford the operators in southern Illinois have been able to steadily maintain a price of $2.25 per ton for their coal, while these interveners have been forced to sell coal produced by them for delivery at Rockford at prices as low as $1.40 per ton. (R. 111.)

The right stated by this Court in the case of *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627, for a carrier to adopt such rates as will enable it to obtain or retain desired traffic for its own lines is not a real right, if its rates which are not unlawful can be cancelled by the Commission on the cry of "rate war" raised by some witness on the basis of the fears and conjectures of such witness.

The railroad appellants argue that the Commission did not arbitrarily disregard the distances from the Milwaukee mines via its line to these destinations, but that the Commission properly ignored the distance via the Milwaukee and considered only the average distances from all the mines in the Brazil-Clinton and Linton-Sullivan groups. The sole question before the Commission was the lawfulness of the rates published by the Milwaukee for the services performed by the Milwaukee. Section 15 (7) of the Act provides for a hearing to determine the lawfulness of the suspended rate, while Section 1 (5) of the Act, which the Commission finds to be violated by these rates, clearly states that the charge must be reasonable for the service rendered or to be rendered, and only such charges as are not just and reasonable for such service are unlawful. The sole question at issue, therefore, was the lawfulness of the charge of the Milwaukee for its service via its single line for the distances from the points of origin to the various destinations involved. The question was not—would the $1.70 and $1.75 rates be a just and reasonable rate for the service of the other carriers from mines on their lines in the Brazil-Clinton and Linton-Sullivan groups to these destinations, but are such rates just and reasonable for the service performed by the Milwaukee in transporting coal from mines on its lines in Indiana to those destinations. The lawfulness of the rates can only be determined by a consideration of the service for which the rates were

charged. The court properly limited its consideration to the charge of the Milwaukee and the service of the Milwaukee. The Commission erroneously refused to consider the service of the Milwaukee in connection with the rate.

Appellants say (Railroad brief, page 73):

> "The proposed rates can properly be considered as group rates and not merely point to point rates from mines on the Milwaukee. The Indiana Coal Trade Association took no such narrow view of the case as the Milwaukee did, but took the position that the proposed reductions could be justified for application to all mines in the Brazil-Clinton and Linton-Sullivan groups, and its exhibits showed average distances from all mines in those groups as well as from the distances of the Milwaukee mines alone."

The Coal Trade Association of Indiana introduced evidence in regard to the individual rates of the Milwaukee to show that the suspended rates were just and reasonable. It also introduced evidence to show that even if considered as group rates from the Brazil-Clinton and Linton-Sullivan groups such rates would not be less than the rates from the Illinois groups to these destinations. In other words, the Coal Trade Association introduced evidence on both theories that either standing alone or as group rates the rates published by the Milwaukee were proper.

In the *13th Section Case*, 182 I. C. C. 537, the question was whether the rates generally from the Illinois groups discriminated against the interstate rates from the Indiana groups to Rockford and Freeport and did not involve the rates of the individual carriers. In that case it was doubtless proper for the Commission to consider the average distances from the Indiana groups. In the case at bar, however, the sole issue was the lawfulness of the individual rates of the Milwaukee, and the comparison of those rates with the average rates from Illinois was proper. It makes

no difference whether the comparison be made with the average of the Illinois rates or the individual rates in Illinois shown in the exhibits in this case, because either comparison shows that the rates published by the Milwaukee are relatively higher than the great majority of the Illinois rates to these destinations. The action of the Commission in refusing to consider the service performed by the Milwaukee in determining the lawfulness of the rates published by the Milwaukee was in and of itself such an error that its order should be set aside by the courts.

Appellants quote from the evidence of the witness for the Coal Trade Association of Indiana that distance is not the controlling factor; that there are competitive conditions which must be taken into consideration. There is no evidence in this case except in regard to the question of distance. No evidence was given as to what the competitive conditions were, or as to how or to what extent they affected rates, and while, as this Court has said, distance is only one element to be considered in fixing rates, when there is no evidence of any other element in the record before the Commission, the Commission is confined to that single element of rate making.

The brief filed by appellants, the United States and the Interstate Commerce Commission presents the same general arguments as the brief for Railroad appellants. It would unduly lengthen this brief to reply in detail to the arguments in both briefs. What we have said in reply to the Railroad appellants is equally applicable to the brief of the other appellants.

We submit that the Findings and Decree of the District Court are in accord with the facts appearing in this record and with the law.

CONCLUSION.

We submit that the Commission, in determining the lawfulness of a suspended rate, must consider the measure of that rate for the service performed for the rate, and that the Commission misconceived its power when it refused to consider the distances via the Milwaukee in passing upon the lawfulness of the rates of the Milwaukee.

We further submit that the Milwaukee has the right to initiate and maintain any rate it believes beneficial to it so long as such rate does not violate any specific prohibition of the Act.

We further submit that the Milwaukee cannot be required to maintain rates relatively higher than other carriers in the same general territory, whether such general level of rates be high or low, in order to maintain a rate structure that is not fixed and constant, or to maintain groups or structure which are not affirmatively shown of record to be just and reasonable.

We further submit that the findings and order of the Commission in this case are not supported by competent substantial evidence, are in many respects contrary to the evidence, and that in making such findings the Commission has failed to consider material uncontradicted evidence appearing of record; that by reason thereof the order of the Commission is void and was properly set aside by the District Court.

Upon the record in this case and the law applicable thereto the District Court could not properly reach any other conclusions than the following which it made herein:

> "I. That the order of the Interstate Commerce Commission of November 8, 1933, as affirmed April 18, 1934, is not supported by substantial evidence.
>
> "II. That there was no substantial evidence in the

record to justify a finding by the Interstate Commerce Commission that the rates proposed were unlawful in violation of the Interstate Commerce Act." (Rec. 56.)

We submit, therefore, that the decree of the District Court should be affirmed.

Respectfully submitted,

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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1934.

No. 379

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ILLINOIS CENTRAL RAILROAD COMPANY, ET AL.,

Appellants,

vs.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, ET AL.,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, APPELLEE.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

OPINIONS BELOW.

The decision of the specially constituted District Court (R. 48) has not been reported. The two reports of the Interstate Commerce Commission (R. 7, 34) *Coal from Indiana to Illinois,* are reported in 197 I. C. C. 245, and 200 I. C. C. 609. This decision and the two reports are set forth in the Appendix to this brief.

Questions Presented.

The controversy involves the validity of an order of the Interstate Commerce Commission requiring the cancellation of schedules proposing reduced rates on bituminous coal to apply from mines on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company in Indiana to destinations in northern Illinois. The determination involves the questions:

1. Whether a carrier may initiate rates, not shown to be unlawful, to meet competitive conditions and thus retain traffic it has enjoyed for many years.

2. Whether the Commission can lawfully require the cancellation of rates not found or shown by the evidence to be unreasonable.

3. Whether the fact that proposed reduced rates will disrupt present relationships, which relationships were not prescribed by the Commission and not shown to be lawful, presents a legal justification for the action of the Commission in requiring their cancellation.

4. Whether the action of the Commission was arbitrary because its findings and order were not supported by substantial evidence.

5. Whether the Commission misconceived its power and exercised power not delegated by Congress.

Statute Involved.

The pertinent provisions of the Interstate Commerce Act are printed in the Appendix (pp. 70-72).

STATEMENT.

This is an appeal from a final decree of the specially-constituted District Court of the United States for the Northern District of Illinois, enjoining an order of the Interstate Commerce Commission entered November 8, 1933, in a proceeding entitled "Investigation and suspension Docket No. 3843, Coal from Indiana to Illinois." (R. 12) The order required the appellee, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the Milwaukee, to cancel a tariff proposing certain reduced rates for the transportation of coal from mines on its line in Indiana to thirty-eight destinations also on its line in northern Illinois.

These proposed reductions were published to restore a long standing relationship in rates between those applicable from mines on the Milwaukee in Indiana, to these destinations, on the one hand, with those applicable from Illinois and Western Kentucky to the same destinations, on the other, which relationship had been disrupted following an order of the Illinois Commerce Commission, effective August 20, 1930, fixing intrastate coal rates.

Reports of the Commission and the Opinion of the District Court.

The Commission filed two reports in this proceeding. The first, by Division 2 (R. 7) dated November 8, 1933, for the convenience of the court, is set out in full in the Appendix. (p. 41) Following this report the Chicago, Milwaukee, St. Paul and Pacific Railroad Company filed its petition for reconsideration, rehearing and reargument before the entire Commission (R. 223) which petition was denied by the Commission on February 5, 1934 (R. 231) Following

the denial of the petition for rehearing and on February 14, 1934, the Bill of Complaint (R. 1) was filed in the United States District Court for the Northern District of Illinois. The Commission then on its own motion, March 7, 1934, reopened the proceeding for argument (R. 35) and on April 18, 1934, two days before the suit was to be heard in the District Court, filed the second report, (R. 34) which is also set out in the Appendix. (p. 47) The cause came on to be heard in court on April 20, 1934, and an interlocutory injunction was issued. (R. 29) The court on June 13, 1934, filed its memorandum opinion (R. 48) also set out in the Appendix. (p. 64) On June 13, 1934, the court filed its findings of fact and conclusions of law (R. 54) and on June 21, 1934, the court entered the final decree (R. 56), permanently enjoining the enforcement of the Commission's order.

THE MINING GROUPS AND THE DESTINATION TERRITORY.

Reference is made throughout the record to certain mining groups, in which bituminous coal is produced and sold in the destination territory. The relative locations of these mining groups are shown on Exhibit 5 (opposite R. 149). These mining groups are located in the states of Illinois, Indiana and Kentucky and those with which we are here concerned are the Springfield and Southern Illinois groups in Illinois, the Brazil-Clinton and Linton-Sullivan groups in Indiana and Western Kentucky group in Kentucky. The destinations to which the proposed rates apply are all located on the Milwaukee and are shown on the map, Ex. 5 (R. 149) and are listed in the tariff (R. 63). These include among others, Freeport, Rockford, Elgin and DeKalb, which are important industrial cities where large quantities of coal are consumed. There is keen competition in

the sale of coal in these cities and the carriers are also in competition in their efforts to transport coal from the different origins to these destinations.

The Milwaukee Railroad, Appellee.

The Milwaukee operates a line of railway extending from points in Indiana to destinations in northern Illinois and beyond in other states. (Ex. 5, R. 149.) It serves a number of coal mines in Indiana in the Brazil-Clinton and Linton-Sullivan groups. The Milwaukee does not serve any of the Illinois mining groups nor Western Kentucky and except through its connections it cannot transport coal from these origins.

For many years the Milwaukee and its predecessors have transported coal from the Indiana mines on its line to destinations in northern Illinois and to other states and this coal movement is an important part of its traffic over that part of its line extending into Indiana. By its single line of railway it transports coal from the Indiana mines to each of the thirty-eight destinations in northern Illinois to which the proposed rates apply.

Railroads and Others Opposing the Proposed Reduced Rates.

Coal bureaus representing coal producers in the Springfield and Southern Illinois groups opposed the proposed reduced rates. Certain railroads serving mines principally in Illinois and Western Kentucky appeared at the hearing before the Commission, the Illinois Central, however, being the only railroad to offer testimony against the proposed reductions. Although several different railroads serve mines in all of the Indiana mining groups, the Illinois Central Railroad, which reaches mines in the Linton-Sullivan Indiana group, was the only Indiana line to oppose the re-

ductions in rates or to participate in the proceedings in court. That railroad is one of the principal lines serving mines in the Springfield, Southern Illinois and Western Kentucky groups.

The Proposed Rates.

By tariff filed with the Commission to become effective December 23, 1932 (R. 60) the Milwaukee proposed reduced rates on bituminous coal from mines on its line in the Brazil-Clinton and Linton-Sullivan mining groups in Indiana to thirty-eight destinations in northern Illinois. The most distant cities to which the rates would apply were Rockford and Freeport. To these cities the rates were reduced from $1.87 per ton to $1.70 per ton from the mines in the Brazil-Clinton group and from $1.92 per ton to $1.75 per ton from the mines in the Linton-Sullivan group. The same rates were published to apply on coal to the other destinations, but as these stations in the past had not all been accorded the same rate, the reduction in cents per ton varied from 4 cents to 17 cents.

History of the Rates.

The keen commercial and carrier competition at these important markets has existed for many years and the relationship in the rates applicable for the movement of coal from the different origins is most important not only to the railroads but also to the operators of the mines.

Exhibit 2 (R. 144) is a statement showing the history of the rates applicable for the transportation of bituminous coal from the Clinton and Linton, Indiana, and the Springfield and Southern Illinois mining groups to Rockford and Freeport, Illinois. From April 1, 1913 to August 20, 1930, rates for the transportation of bituminous coal from the Clinton, Indiana, group to Rockford, Illinois, were, with un-

important exceptions, the same as the rates from the Springfield, Illinois, group to Rockford. Prior to April 1, 1913, the rates from the Clinton, Indiana group to Rockford were lower than the contemporaneous rates from the Springfield, Illinois group to the same destination. From October 10, 1922 to August 20, 1930, the rates on bituminous coal from the Clinton group to Freeport, Illinois, were the same as were the contemporaneous rates from the Springfield, Illinois, group to Freeport, Illinois. The rates from the Southern Illinois group to destinations in northern Illinois, including Rockford and Freeport, have been for many years and are today thirty cents per ton over the applicable rate from the Springfield, Illinois, group to the same destinations. (R. 144)

While the relationship between the rates from Indiana to northern Illinois, with those from the Illinois origins to northern Illinois, has never been prescribed by the Commission, the existence of such relationship has frequently been considered and commented upon by the Commission. *Indiana and Illinois Coal*, 40 I. C. C. 603; *Illinois Coal Cases, 1920*, 62 I. C. C. 741; *Illinois-Indiana Coal Cases*, 128 I. C. C. 265.

This relationship in the rates between those applicable from the mines in Indiana and those from Illinois was disrupted on August 20, 1930, when the order of the Illinois Commerce Commission reducing the intrastate rates on bituminous coal 17 cents per ton from the Springfield and Southern Illinois groups to Rockford and Freeport became effective. (R. 72 and 144) This placed the Springfield, Illinois, group on a basis of 17 cents per ton under the rates applicable from the Brazil-Clinton, Indiana group, and 12 cents per ton under those applicable from the Linton-Sullivan, Indiana group, and likewise reduced the differential of those Indiana groups under Southern Illinois. (R. 144)

Following the order of the Illinois Commerce Commission, the Illinois Central, the Milwaukee and other interested carriers filed a petition with the Interstate Commerce Commission, alleging a violation of Section 13 of the Interstate Commerce Act, and requested the Interstate Commerce Commission to require the intrastate rates on coal within Illinois to be increased, charging that the rates required by the Illinois Commerce Commission to be assessed as maxima for the transportation of coal within Illinois from mines in that state to Rockford and Freeport, were unlawful as causing undue and unreasonable advantage, preference and prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other, and as unjustly and unreasonably discriminating against interstate commerce. A hearing was had on that complaint and the Interstate Commerce Commission refused to require the intrastate rates within Illinois to be increased. The Commission's report in that proceeding is entitled *"Intrastate Rates on Bituminous Coal in Illinois,"* 182 I. C. C. 537.

In that report the Commission dealt with the rates from Illinois origins to Dixon, Freeport and Rockford. Dixon is not involved in this proceeding. Appellants, by brief, call attention to the Commission's quotation from that report (R. 36) in which reference is made to low rates from Indiana. The Commission referred to the rates to Dixon and the rates from distant Indiana groups as being low and none of those rates are involved in this proceeding. It appears from the report in that case, page 549, that the Commission recognized that unless the Illinois rates were increased, reductions in rates from Western Kentucky and Indiana would inevitably follow.

Thereafter, without protest or objection on the part of the Commission, railroads or other interested parties, the

rates on bituminous coal from Western Kentucky were permitted to be reduced 17 cents per ton. (Exhibit 6, R. 149.) The Illinois and Western Kentucky rates having been reduced, there remained only the rates from the Indiana mines which were out of line with the long existing relationship, and following the refusal of the Interstate Commerce Commission to require the intrastate rates to be increased, and, to restore the pre-existing relationship, the Milwaukee Railroad filed its tariff with the Commission, proposing the same reductions in cents per ton as has been required within Illinois.

The rates from Western Kentucky to northern Illinois were reduced 17 cents per ton, the same amount as that required within Illinois, on the theory that the outstanding order of the Commission in *Illinois-Indiana Coal Cases*, 128 I. C. C. 265, decided June 14, 1927, had definitely fixed the differential relationship between Western Kentucky and Illinois on coal moving to destinations in northern Illinois.

In the *Illinois-Indiana Coal Cases, supra,* the Commission had definitely before it the relationship in the rates on coal from Indiana, Illinois and Western Kentucky to destinations in northern Illinois. At that time, 1927, (R. 144) the rates from the Springfield, Illinois, group and the Brazil-Clinton, Indiana, group were the same, and the Southern Illinois rates were 30 cents per ton over these rates. The rate from Western Kentucky to the same destinations was 25 cents per ton over that applicable from Southern Illinois. In that report the Commission required the differential between the rates applicable from Western Kentucky and those applicable from the Indiana and Illinois mines to be increased 10 cents per ton and found on page 284:

> "We further find that the interstate rates assailed are not otherwise unreasonable, but that the relationship between the rates from Illinois to points in Illinois, Indiana, Michigan, Wisconsin, Minnesota, North

Dakota, South Dakota, Nebraska, and Iowa, and from Indiana to points in Illinois and Wisconsin, on the one hand, and mines in Western Kentucky, on the other, results in undue prejudice to mines in Illinois and Indiana and in undue preference of mines in Western Kentucky; that said undue prejudice and preference is due to the maintenance of unreasonably low rates from mines in Western Kentucky and should be removed by increasing the rates from said mines in the amount of 10 cents per net ton to all destinations in the States named to which the existing differential of Western Kentucky over the Southern Illinois group is 25 cents per net ton."

This was a definite finding that the then existing relationship between the rates from Western Kentucky to northern Illinois on the one hand and those applicable from Indiana and Illinois to Northern Illinois on the other, was unduly prejudicial to Indiana and Illinois. By the reductions from Western Kentucky which the Commission has permitted the prejudice which the Commission required to be removed was again established and in fact increased as the Commission had found that a differential of 55 cents per ton as between Brazil-Clinton and Western Kentucky was unlawful and required it to be increased to 65 cents. By the reduced rates from Western Kentucky, that differential has been reduced to 48 cents per ton. The rates which the Milwaukee Railroad published and which the Commission required to be canceled would restore the differential in the relationship which the Commission required in the *Illinois-Indiana Coal Cases, supra,* and would restore the long existing relationship which had existed between rates from the affected mines in Indiana with those from Illinois to the destinations named.

The long existing relationship in these rates from the different mining origins to northern Illinois, disturbed by the order of the Illinois Commerce Commission, effective August 20, 1930, apparently fairly met the needs of the pro-

ducers of coal in the different origins, although under those rates the Illinois mines had been able to sell much larger quantities of coal at the destinations than had those in Indiana. (R. 217)

While it was not contended by the Milwaukee that the then existing or the proposed rates were maximum reasonable rates, they were not shown to be unreasonably low and were shown to be necessary to meet competitive conditions and to restore long standing relationships with competing Illinois mines. Though other railroads serve other mines in the Brazil-Clinton and Linton-Sullivan groups, the routes from those mines to the destinations are circuitous as contrasted with the short single line of the Milwaukee (R. 149) and it was undisputed that the Milwaukee transported 99 per cent of the coal moving from these groups to Rockford and Freeport (R. 82, 86).

The District Court enjoined the enforcement of the order and found that the Commission's findings were not supported by substantial evidence.

SUMMARY OF ARGUMENT.

I.

The Interstate Commerce Commission can only require schedules stating new rates to be canceled under Section 15 (7) of the Interstate Commerce Act when after hearing such rates are found from substantial evidence, to be unlawful. A carrier has the right to initiate rates and to adopt such policy of rate making as to it seems wise and necessary to meet competitive conditions. *United States* v. *Illinois Central Railroad,* 263 U. S. 516, 522. *Texas & Pacific Railway Company* v. *United States,* 289 U. S. 627, 636. The Commission's order was void as it erroneously required the Milwaukee to justify the proposed reduced rates contrary to the provisions of Section 15 (7). *Anchor Coal Company* v. *United States,* 25 F. (2) 462.

The Commission stated that the proposed rates violated Section 1 (5) and 15-a (2) of the Interstate Commerce Act. There was no appropriate finding except the mere statement of the Commission in the words of the statute that the rates were unreasonable in violation of Section 1 (5) of the Act, and there was no substantial evidence to support a finding that the rates were unreasonably low. The Commission's finding that the proposed rates would disrupt relationships between mines and mining groups was not a finding that the rates were unlawful, as the Commission had not prescribed the existing relationships and did not find in this proceeding that they were lawful. There was no substantial evidence that the proposed reduced rates would result in revenue loss to the Milwaukee or that such reductions would result in revenue loss to other carriers, and the facts

did not warrant a finding that the rates were in violation of Section 15-a (2) of the Act.

II.

The entire record, including all of the testimony which was before the Commission, was offered in evidence at the hearing in the District Court. That court correctly held the order to be void and enjoined its enforcement as there was no substantial evidence that the proposed rates were unlawful in violation of the Act. The competency and sufficiency of the evidence to support an order and the determination as to whether or not the Commission acted within its delegated authority, are questions of law which the court will review. *Interstate Commerce Commission* v. *L. & N. Railway Company,* 227 U. S. 88, 92, 93.

III.

While Section 15 (1) of the Act as amended empowers the Commission to prescribe either maximum or minimum or maximum and minimum rates to be charged, the Commission did not in this proceeding exercise this power and fix a minimum rate or any rate, and the issues and evidence before the Commission did not warrant its exercise of such power.

IV.

Section 15-a (2) of the Act as amended June 16, 1933, defines certain factors to which, among others, the Commission shall give consideration in the exercise of its power to prescribe just and reasonable rates. While perhaps the amended statute prescribes a new rule for rate making, it is not essential to the determination of the issues in this

proceeding to determine to what extent the changes affected the Commission's authority as there was no substantial evidence that the proposed rates violated the provisions of either the original Act or of the Act as amended. The District Court properly found that there was no substantial evidence that the proposed rates would adversely affect the revenue of the Milwaukee or other railroads or that such rates would threaten an adequate, efficient railway transportation service.

ARGUMENT.

I.

THE INTERSTATE COMMERCE COMMISSION CAN EXERCISE ITS POWER UNDER SECTION 15 (7) OF THE INTERSTATE COMMERCE ACT TO REQUIRE A CANCELLATION OF SCHEDULES STATING NEW RATES ONLY AFTER A HEARING AND APPROPRIATE FINDINGS SUPPORTED BY SUBSTANTIAL EVIDENCE THAT THE PROPOSED RATES ARE UNLAWFUL.

1. *A carrier has the right to initiate rates.*

The Milwaukee Railroad, appellee, by appropriate schedules proposed reduced rates for application over its line on bituminous coal from mines on its railroad in the Brazil-Clinton and Linton-Sullivan Districts in Indiana, to thirty-eight named destinations in northern Illinois. That a carrier has the right to initiate rates will not be disputed. This court has repeatedly so held.

In *United States* v. *Illinois Central Railroad,* 263 U. S. 515, at page 522, decided January 7, 1924, the court said:

> "A carrier is entitled to initiate rates and in this connection to adopt such policy of rate making as to it seems wise. *Interstate Commerce Commission* v. *Chicago, Great Western Railway Company,* 209 U. S. 108, 118-119. *Southern Pacific Company* v. *Interstate Commerce Commission,* 219 U. S. 433. *Interstate Commerce Commission* v. *L. & N. R. R. Co.,* 227 U. S. 88, 92."

A carrier has the undoubted right to so adjust its rates that it may meet competitive conditions and obtain or retain the traffic for its own line. The only limitation on the carrier's right to so initiate rates is that such rates must not be in conflict with the provisions of the Interstate Commerce Act. In *Texas & Pacific Railway Company, et al.* v.

United States of America, et al., decided May 29, 1933, 289 U. S. 627, at page 636, the court said:

> "As the carriers are in competition for the business they may, within the zone of reasonableness, prescribed by the statute, adjust their rates so as to obtain or retain the desired traffic for their own lines. *Interstate Commerce Commission* v. *Alabama Midland R. Co.* (C. C. A. 5th) 74 Fed. 715, 723, 724, 5 Inters. Com. Rep. 685, U. S. 144, 172, 173, 42 L. ed. 414, 425, 18 S. Ct. 45; *Skinner & E. Corp.* v. *United States,* 249 U. S. 557, 564, 73 L. ed. 772, 777, 39 S. Ct. 375; *United States* v. *Illinois C. R. Co.,* 263 U. S. 515, 522, 68 L. ed. 417, 424, 44 S. Ct. 189.
>
> "The theory of the Act is that the carriers in initiating rates may adjust them to competitive conditions, and that such action does not amount to undue discrimination. *Texas & P. R. R. Co.* v. *Interstate Commerce Commission,* 162 U. S. 197, 40 L. ed. 940, 16 S. Ct. 666, 5 Inters. Com. Rep. 465."

The carriers have long been in competition in the movement of coal from the different mining origins to Rockford and Freeport and other northern Illinois destinations involved, and the proposed rates are not only necessary if the Milwaukee is to continue to transport coal from its mines in Indiana to this destination territory, but by the publication of the proposed rates the Milwaukee is simply restoring a long standing relationship between the rates from its mines to these destinations with the rates from other origins to the same destinations. (R. 144) By the proposed rates the Milwaukee is not attempting to secure traffic which has heretofore moved over other lines, but is simply attempting to retain to its own line traffic which it has enjoyed for many years.

2. *The Commission can only require the cancellation of schedules proposing new rates when after hearing there is a finding supported by evidence that such proposed rates are unlawful.*

The authority of the Commission to suspend or require the cancellation of rates is contained in Section 15 (7) of the Interstate Commerce Act, which provides in part as follows:

> "Whenever there shall be filed with the Commission any schedule stating a new, individual or joint rate, * * * the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate. * * *"

It will be noted that the statute authorizes the Commission to "enter upon a hearing concerning the lawfulness of such rate". It follows that unless the proposed rates are found from substantial evidence to be unlawful, the Commission has no right or authority under the Act to require the cancellation of rates initiated by the carrier. In *Interstate Commerce Commission* v. *L. & N. Ry. Co.* 227 U. S. 88, 92:

> "Under the statute the carrier retains the primary right to make rates, but if, after hearing, they are shown to be unreasonable, the Commission may set them aside and require the substitution of just for unjust charges. The Commission's right to act depends upon the existence of this fact, and if there was no evidence to show that the rates were unreasonable, there was no jurisdiction to make the order."

See also *Texas & Pacific Railroad Company* v. *United States,* 289 U. S. 627.

3. *The Commission exceeded its power and its order is not supported by substantial evidence or essential findings.*

The Statute, Section 15, Paragraph 7 of the Act, authorizes the Commission to suspend proposed schedules of new rates and "to enter upon a hearing concerning the lawfulness of such rate". And further, "and after full hearing * * * the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it (the rate) had become effective".

The statute requires that the lawfulness of the proposed rates must be determined after a full hearing. The parties are entitled to know upon what facts and conclusions the Commission arrived at its decision, and in order that a court on review may intelligently pass upon the question as to whether or not the Commission has acted within the power delegated by Congress, it has repeatedly been held that the order of the Commission must be supported by appropriate findings. In the absence of such findings, the court is not "called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit. The Commission is the fact-finding body and the Court examines the evidence not to make findings for the Commission but to ascertain whether its findings are properly supported." *Florida* v. *United States,* 282 U. S. 194, 215. And the failure of the Commission to make appropriate findings "leaves the parties in doubt as to a matter essential to the case and imposes unnecessary work upon the courts called upon to consider the validity of the order". *Beaumont, Sour Lake & Western Railway Company* v. *United States,* 282 U. S. 74, 86.

That the court should look behind the mere formal findings of the Commission and examine the entire reports, to determine whether or not it has acted within the power

granted, is plain. In *Southern Pacific* v. *Interstate Commerce Commission,* 219 U. S. 443, 449:

> "While it is true that the opinion of the Commission may contain some sentences which, when segregated from their context, may give some support to the contention that the order was based upon a consideration merely of the intrinsic unreasonableness of the rate which was condemned, we think when the opinion is considered as a whole in the light of the condition of the record to which we have referred, it clearly results that it was based upon the belief by the Commission that it had the right under the law to protect the lumber interests of the Willamette Valley * * *."

(a) *The Commission's findings.*

In the light of the foregoing, let us examine the record and the reports of the Commission to determine what was actually done.

The duty of the court to go behind the mere formal conclusions of the Commission to ascertain exactly what was done and upon what facts and upon the application of what principles it has arrived at its conclusions is particularly important in this proceeding. *Southern Pacific* v. *I. C. C.* 219 U. S. 433. The original report (R. 7) contained no findings that the proposed rates were unlawful. The Commission recognized that the rate situation as between the two Indiana groups and the Illinois groups might be in need of correction, (R. 12) but it was not convinced that the Milwaukee had affirmatively justified the proposals.

Following this report the Milwaukee filed its petition for reconsideration (R. 223) which was denied by the entire Commission February 5, 1934. (R. 231) On March 7, 1934, after the Commission had been served with the Bill of Complaint filed in this cause February 14, 1934 (R. 1), the Commission on its own motion reopened the proceeding for further argument. No additional testimony was taken, but on April 18, 1934, two days before the case was to be heard in

the District Court, the Commission filed its second report. (R. 34)

It is obvious, we believe, that in the second report the Commission made an effort to meet the attack made on the original report and order in the Bill of Complaint. That it studiously examined the record in search of facts which might support the order, can be assumed. Its failure to refer to substantial evidence supporting the issues was simply because the facts are not in the record. The District Court had the entire record and all of the evidence before it, and after a carefully considered opinion (R. 48) found that the order was not supported by substantial evidence. (R. 56) The appellants, while asserting that there is substantial evidence to support the conclusion that the rate structure on coal will be threatened with a consequent loss in carrier revenue, have failed to quote one syllable of testimony from the record which will support such contention. The District Court did not pass upon conflicting evidence. It simply held after an examination of the record, that there was no substantial evidence to support the order. We submit that before the appellants are entitled to a reversal, they must point out wherein the District Court erred.

(b) *The findings in the first report of the Commission.*

In the first report of the Commission (R. 7, 12) there were no findings except the mere statement:

> "We find that the proposed schedules have not been justified."

The report clearly indicates that the Commission felt that it was justified in requiring the schedules to be canceled, if the Milwaukee had failed to establish that the proposed reduced rates were lawful. The statute, Section 15 (7) of the Act, which authorizes the Commission to enter upon a hearing as to the lawfulness of proposed rates, provides in part:

> "At any hearing involving • • • a rate • • •

> sought to be *increased* after the passage of this Act, the burden of proof to show that the increased rate * * * is just and reasonable, shall be upon the carrier. * * *"
> (Italics ours.)

The burden is placed upon the carrier proposing new rates only to establish that *increases* are *just* and *reasonable*. No such burden is placed on the carrier to justify *reduced* rates or that the proposed rates are otherwise lawful. In a well considered opinion in *Anchor Coal Company* v. *United States*, 25 Fed. (2) 462* (District Court, W. Virginia), the specially constituted three judge court in discussing this part of the statute, said on page 475:

> "It will thus be seen that, in the very act which for the first time gave to the Commission the power to establish minimum rates and prevent reductions, there was incorporated a provision placing upon carriers the burden of justifying only an increased rate. This is of importance, not only upon the principle '*Expressio unius est exclusio alterius*,' but also because it expresses a legislative policy favoring low rates. There is all of the difference imaginable between a proposition to raise and one to lower rates.
>
> "In the former case, the natural presumption is that the carrier will charge what the traffic will bear, and before he is allowed to increase his charges he should show that the increase proposed is justified by cost of operation or other valid criterion. Furthermore, the matters justifying the increase are matters peculiarly within the knowledge of the carrier proposing it. In the case of a reduction of rates, however, the self-interest of the carrier can ordinarily be depended on to guard against too great a reduction; and the reasons for denying the reduction, such as the effect on other carriers, are matters which are not peculiarly within the knowledge of the carrier offering the reduction, and could be better shown by the carriers injuriously affected."

The wording of the statute is plain and no other con-

*(As the issues had become moot before submission to this court, the Decree enjoining the Commission's order was reversed to dispose of the injunction. *United States* v. *Anchor Coal Company*, 279 U. S. 812.)

struction is tenable. While this court has not specifically interpreted the statute, it has said in reviewing an order of the Commission in an Investigation and Suspension proceeding:

> "Since the proposed tariff involved an increase in the rate, the burden of justifying the increase before the Commission was imposed upon the carrier by paragraph 7 of Section 15 * * *."

Atchison, Topeka & Santa Fe Railway Company v. *United States*, 279 U. S. 768, 773.

The Commission apparently recognized that it could not successfully defend the finding made in its first report, and accordingly other findings were made in the second report. (R. 34, 46)

It is asserted in the brief for the United States and Interstate Commerce Commission, page 61, that the Milwaukee neglected to raise a question concerning the burden of proof and proceeded without protest to offer its evidence, *first*, at the hearing before the Commission. The Government loses sight of the real objection to the requirement on the part of the Commission that the Milwaukee proposing reduced rates assume the burden of justifying their lawfulness. It is not a question of order of witnesses or procedure before the Commission, but a question as to whether or not, lacking evidence, the Commission may require the schedules to be canceled.

There was no finding in the first report that the rates were unlawful, and the Commission clearly exceeded the power delegated by Congress, by requiring the schedules of the Milwaukee to be canceled in so far as reliance is placed upon the original report and order. (R. 7) An examination of the second report and additional findings discloses that while there was an obvious attempt to meet the objections apparent on the face of the first report, the second report is also vulnerable to the same attack. Such

examination further indicates that the Commission misconceived its power and required the proposed schedules to be canceled, not because they were unlawful, but because the Commission believed, under the circumstances, that it could substitute its judgment for that of the management of the railroad.

(c) *The findings in the second report of the Commission.*

(1) *The mere statement in the words of the statute that the proposed rates were unreasonable in violation of Section 1 (5) was not an adequate finding and there was no substantial evidence that the rates were unreasonable.*

In the second report the Commission said:

> "We find the proposed rates would be unreasonable and in violation of Section 1 (5) and Section 15-a (2) of the Act." (R. 47)

The Commission's order should be set aside unless the findings supported by substantial evidence justify the cancellation of the rates because of a violation of one of the two sections referred to by the Commission. We will first consider the finding that the proposed rates would be "unreasonable in violation of Section 1 (5)."

It is obvious that the mere statement of a conclusion in the words of a statute is not a sufficient finding such as is required to support an order of the Commission. *Florida* v. *United States,* 282 U. S. 194, 213. The Commission is required to make such findings from the evidence as will make it possible to determine upon what grounds and facts the Commission acted. *Florida* v. *United States,* 282 U. S. 194, *Beaumont, Sour Lake & Western Railway Company* v. *United States,* 282 U. S. 74, *Norwegian Nitrogen Corporation* v. *United States,* 288 U. S. 294, 318.

The statement by the Commission that the rate is unreasonable is a mere statement of a conclusion or an opinion

and the parties are entitled to know by what standard and on what facts the conclusion was reached.

By what standard should a rate be measured to determine whether or not it is unreasonable? Section 1 (5) of the Interstate Commerce Act provides:

> "All charges made for any service rendered or to be rendered in the transportation of passengers or property or in the transmission of intelligence by wire or wireless as aforesaid or in connection therewith shall be just and reasonable and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful. * * *"

To support the contention that a rate may be unreasonably low, the Commission refers to *Interstate Commerce Commission* v. *Railway Company*, 167 U. S. 479, 511. (R. 45) In that case the court said, referring to the Interstate Commerce Act:

> "The first section declares that the rate shall be reasonable and just and prohibits every unreasonable and unjust charge. Now the rate may be unreasonable because it is too low as well as because it is too high. In the former case it is unreasonable and unjust to the stockholders and in the latter to the shipper."

This expression of the court furnishes a definition of what might be an unreasonably low rate under Section 1 of the Interstate Commerce Act and we submit that there was no evidence or contention that the rates proposed were unreasonably low as measured by that standard.

In the brief filed by the railroads, appellants in this proceeding, we find on page 23:

> "There was no contention that the proposed rates of the Milwaukee were so low that they would not yield sufficient revenue to compensate it for its services in rendering transportation thereunder."

Rates might be considered unreasonably low if so low as to cast a burden on other traffic. It was neither suggested

nor contended that the proposed rates would cast a burden on other traffic.

The Commission made some rate comparisons which the United States and Interstate Commerce Commission argue by brief (page 53) justify a finding that the proposed rates are unreasonably low.

The fallacy of this argument is apparent, as these comparisons were made with schedules which had been prescribed as maxima. This proved nothing except possibly that the proposed rates were not in excess of maximum reasonable rates. This was not an issue as the Milwaukee admitted that the rates were less than maximum reasonable rates.

> "We can see how logically a rate might be condemned as too low when compared with a minimum rate from a competing community, but there is certainly no criterion by which it can thus be condemned when compared with a maximum rate."
>
> *Anchor Coal Co.* v. *United States,* 25 Fed. (2) 462, 475.

The Government calls attention to the comparison made by the Commission in *Coal Trade Association* v. *Baltimore & Ohio Railroad Company,* 185 I. C. C. 225, which was a maximum scale prescribed by the Commission for the transportation of coal from Indiana to Central Illinois. The scale prescribed by the Commission was a scale above which the carriers could not go, although they might publish lower rates, and there was no showing in the record as to what rates were actually assessed for the transportation of coal in that territory.

The Commission also made some comparisons (R. 39) of the rates from Springfield, Southern Illinois, Brazil-Clinton and Linton-Sullivan mining groups to Rockford and Freeport. Those rates applicable within Illinois were prescribed as maximum reasonable rates by the Illinois Commerce

Commission, and the Interstate Commerce Commission refused to require them to be increased. *Intrastate Rates on Bituminous Coal in Illinois*, 182 I. C. C. 537. The comparison which the Commission makes indicates that the proposed rates from Indiana are relatively as high as those prescribed as maxima within Illinois. We submit that the Commission cannot arbitrarily conclude from such a comparison that a rate is unduly low.

While the rates which the Milwaukee proposed would apply only from mines on its line in Indiana to the destinations, in making the comparison the Commission used mileages which included the average short tariff routes from all mines in the two named Indiana mining groups. This inflated the mileage, as circuitous routes over which little or no traffic is moved, were included. To illustrate, the Commission used as the distance from Brazil-Clinton to Rockford, 272 miles. (R. 39) This was arrived at by including a circuitous two line joint route of the Pennsylvania Railroad of 332 miles from mines on its line over which the proposed rates would not apply. This route is over 100 miles in excess of the distance over the single route of the Milwaukee. (Ex. 8, R. 149) Other circuitous routes were included which tended to inflate the distance, (R. 149) although the fact is not disputed that the Milwaukee Railroad transports 99 per cent of the coal that moves to Rockford and Freeport from the two named Indiana groups. (82-86)

We submit that these comparisons give no support to the contention that the proposed rates were unreasonably low in violation of Section 1 (5). The Milwaukee railroad cannot lawfully be denied the right to publish a reasonable rate from mines on its railroad to the destinations in question simply because the same rate if applied over longer and circuitous joint line routes might appear to be low, without any evidence or finding that the rates from all of the mines in the two named Indiana groups should and could lawfully

be the same. This is especially true when it appears that the rates over the circuitous routes are mere paper rates, as little or no coal is moved via those routes.

To further emphasize the fact that the conclusion by the Commission that the rates would be unreasonably low in violation of Section 1 (5), was simply arbitrary, attention is called to the fact that while the Milwaukee proposes a rate of $1.70 from mines on its line in the Brazil-Clinton district to Rockford, it is required to join in rates from mines in the Springfield, Illinois, group to Rockford of $1.70 over routes which are much longer and which reach as a maximum 373 miles. (R. 147) Certainly the conclusion that a rate of $1.70 for the transportation of coal 231 miles, single line, is unreasonably low as compared with the same rate for 373 miles, joint line, is simply arbitrary and such a comparison offers no support for the finding.

While it is not contended that the proposed rates are maximum reasonable rates, it has long been recognized that there may be a zone of reasonableness between a reasonably high rate and a reasonably low rate. *Texas & Pacific Railroad Company* v. *United States*, 289 U. S. 627, 636.

The Commission made no appropriate finding that the proposed rates were unreasonable under Section 1 (5) of the Act, and it affirmatively appears that measured by any known standard, there was no evidence in the record from which such a finding could lawfully be made.

(2) *Finding of the Commission that the proposed rates would cause a disruption of the individual groups from which the rates are proposed, and the rate relation existing between the several Indiana groups and a disruption of the rate structure on coal in Indiana and related areas.*

The Commission found that if the proposed rates were permitted to become effective, they would cause a disruption of the individual groups from which the rates are proposed. The appellants argued at length that this would result. It must be admitted that if other railroads serving other mines in the two Indiana groups did not also reduce their rates, where they did publish the same rate as that which applied over the Milwaukee, there would be a disruption of whatever grouping now exists. Does that, however, support the contention that the proposed rates are unlawful? The propriety of the grouping was not before the Commission. It had not been prescribed by the Commission. In so far as there was a grouping of rates from the mines in the Brazil-Clinton and Linton-Sullivan districts to this territory, it had simply been voluntarily established by the carriers with circuitous routes to meet the rate of the Milwaukee applicable by its short and direct single line. The evidence indicated that the carriers now maintain different rates from these origin districts to many of the thirty-eight destinations in northern Illinois. (Ex. 8, R. 150, 151, 152)

Certainly, the Milwaukee railroad cannot be deprived of its right to publish a competitive compelled rate simply because that rate could not properly be applied from all mines on all railroads in those groups when there was no issue, no finding and no evidence to support a finding that all of the mines in the two Indiana groups should or could properly be grouped for rate making purposes. This is especially true since, it has been pointed out, the Milwaukee railroad was transporting 99 per cent of the coal from these

mining groups to Rockford and Freeport, the most distant cities in the destination territory. (R. 82-86)

What has been said with reference to the impropriety of requiring the rates to be canceled because they would result in the splitting of the Brazil-Clinton and Linton-Sullivan mining groups, can also be said with reference to the finding that the proposed rates would disturb the differential relationship between those mining groups and other mining groups in Indiana. The differential relationship between these groups has been voluntarily established by the carriers and not been prescribed by the Commission. The issue as to the propriety of the existing relationships was not before the Commission. No evidence was offered to support the contention that the existing differentials were proper, and the Commission did not and could not find from the record that they were lawful.

We submit that the Commission could not find the proposed rates to be in violation of Section 15 a (2) of the Act, simply because the existing differentials voluntarily maintained between the different Indiana origin groups would be disturbed without a record from which a finding could properly be made that the present differentials were lawful. In this connection it should be remembered that the relationship existing between the Indiana mines is no more important to the carriers than was the relationship between the Brazil-Clinton mines and the Springfield, Illinois, mines which had existed since 1910, and was not disturbed until the Illinois rates were reduced by order of the Illinois Commerce Commission, effective August 20, 1930. While it has been pointed out that the differential existing between the Brazil-Clinton and Southern Illinois mines to Rockford and Freeport had existed only since 1925, the relationship between these two groups was continuously the same as the relationship between the Southern Illinois and the Springfield, Illinois, groups. (R. 144)

We repeat that the Commission could not require the cancellation of the proposed rates simply because such rates if permitted to become effective would disrupt voluntary relationships between the different mining groups. Any new or different rate will always change existing relationships.

(3) *The finding that the proposed rates if permitted to become effective would lead to a disruption of the rate structure on coal in Indiana and related areas impairing the revenue of carriers serving those areas and their ability to provide the adequate and efficient transportation service contemplated by Section 15 a of the Act.*

After stating that the proposed rates would split the Brazil-Clinton and Linton-Sullivan, Indiana, groups and would disrupt present differentials, in the next breath the Commission states that the groups would not be split and the differentials would not be disturbed, but that other carriers would make reductions which would impair the revenue of the carriers. While much has been said by the Commission in its reports and by the appellants in argument with reference to other reductions in rates which could follow if the proposed rates were permitted to become effective and the resulting loss in revenue which could be sustained by the carriers, we submit that the district court's finding that such issue was not supported by substantial evidence is the only conclusion which can be made from this record. We may assume that the appellants have diligently searched the record to find evidence to support the contention that other rates will be reduced, and that there will be a resulting loss in revenue.

We particularly desire to direct the court's attention to the character of testimony upon which they rely but fail to quote. (Brief for United States, page 58) They cite the

testimony of the assistant to the traffic manager of the Illinois Coal Traffic Bureau, Mr. Rosene, at page 117 of the record. He said:

> "I could not conceive of the idea of the Commission giving one certain mine in a group a lower rate than the rest of the points in the same particular rate making group. I would just naturally assume that if the rates from Brazil-Clinton come down to 15 cents, or 10 cents, or even a nickel, or whatever the change may be, the rest of the group will come down or go up with them."

Mr. Malum, appearing for the Springfield Coal Traffic Bureau, said on page 127 of the record:

> "Based on my experience in the coal business, as to what action I think the other Indiana originating lines would take in the event that the Commission were to permit the 17 cent reduction to go into effect from Milwaukee mines, I do not think there is any question but that it will spread to the other railroads serving the Brazil-Clinton and Linton-Sullivan groups and in time go down into the southern part of Indiana."

Mr. DeCamp, General Commerce Agent of the Illinois Central Railroad, said on page 129 of the record:

> "I firmly believe that if these reductions are confirmed and approved by the Interstate Commerce Commission, the ink will not be dry upon the order vacating the suspension before tariffs of competing lines in the same district will be issued, making the same reductions. Why, it will only be a matter of time, as I see it, in such event, before the Princeton and the Boonville groups will follow with similar reductions. * * * Now, if that should happen, which in all probability may be, all of Indiana goes down 17 cents. How long would it be before drastic requests and strong pressure would be exerted upon Illinois roads to make a similar reduction. Now, if that were done, which is possible, it would produce lower rates to Freeport and Rockford from the large originating groups in Illinois, than apply to Chicago."

The Commission accepted the foregoing statements and assumptions as evidence that rates in Indiana, Illinois and

Western Kentucky would all be reduced, resulting in a loss in carrier revenue. The District Court said that this was not substantial evidence. The foregoing quoted statements of the witnesses was all of the testimony upon which the Commission and appellants rely to establish that carrier revenue would be adversely affected, and that the ability of the carriers to provide adequate and efficient service would be threatened. If the Commission can accept as evidence such assumptions and conjectures made by a representative of a competing railroad, and thus forestall a review by the courts, the hearing provided for is mere form and the right to a review by the courts, specifically authorized by statute, becomes a fiction.

No witness representing any railroad appeared at the hearing and testified that his line would reduce any rates in the event the proposed rates became effective. Even Mr. DeCamp of the Illinois Central did not so state. The Commission has the power to suspend and require to be canceled any such proposed rates which might be made if found to be unlawful.

In suggesting that the rates to Chicago from Illinois origins might be reduced, the Commission entirely ignored the fact that it had prescribed minimum rates for application on that traffic which could not be reduced without first securing the consent of the Commission. *Intrastate Rates on Bituminous Coal in Illinois,* 182 I. C. C. 537. Moreover, in suggesting that the rates might also further be reduced from Western Kentucky, the Commission neglected to state that it had fixed a definite differential between Western Kentucky and the Indiana mining groups; that if reductions were attempted from Western Kentucky to this destination territory, they would be in direct violation of the Commission's outstanding order in *Illinois Indiana Coal Cases,* 128 I. C. C. 265, 284.

The suggestion that there will be a loss in the revenue of the carriers in the event the proposed rates are permitted to remain in effect is not supported by any evidence, and important rights between parties should not be permitted to be determined on mere guesses and assumptions.

The Commission entirely lost sight of the loss in revenue which the Milwaukee will sustain in the event it is not permitted to continue to publish its rates on a parity with those from Springfield, Illinois. The other Indiana lines serving the Brazil-Clinton and Linton-Sullivan groups have little interest in these rates, as the evidence discloses that they have moved not more than one per cent of the traffic to these important destinations in the past. (R. 82 and 86) The evidence shows, however, that since the disruption of the long standing relationship between the Illinois rates and those from Brazil-Clinton and Linton-Sullivan, the Milwaukee has suffered material loss by the reduction in the amount of tonnage transported.

As pointed out by the Commission (R. 38) in comparing the volume of coal moved to Rockford in 1932 from the Springfield group, it was 245 per cent of that moved in 1929, and from the Brazil-Clinton group it was 39.6 per cent of that which moved in 1929, 1929 being the last full year that the two groups were on a parity. The record shows that there has been a continual decrease in the amount of coal moving from the Brazil-Clinton and Linton-Sullivan groups to this destination since 1930, and a continual increase of the movement from the Springfield, Illinois, group. (R. 217) The coal moving from the Brazil-Clinton and Linton-Sullivan groups to Rockford, 99 per cent of which is moved via the Milwaukee, decreased 50 per cent, 1932 under 1930, while the total consumption of coal at Rockford from all Indiana, Illinois and Western Kentucky decreased in the same years but 28 per cent. (R. 217) The Milwaukee has the right to so adjust its rates within

the zone of reasonableness to meet competitive conditions as in its judgment is necessary to retain the traffic. The Commission has no right simply to substitute its judgment. Unless there was evidence that the reduced rates would lead to a loss in carrier revenue, the Commission was not empowered to require their cancellation, under any claimed authority granted by Section 15-a (2). From a careful examination of those parts of the record to which appellants have referred, we find that no representative of any railroad testified that his railroad would reduce rates. Without evidence from which the Commission could properly find that the rates proposed were unreasonable for the service to be performed over the route they would apply and it is not contended that there was such evidence, the Commission could not lawfully require their cancellation simply because it assumed, without evidence, that other rates might be reduced. The service performed by other carriers serving other mines in the same and other groups was not in evidence and whether their present rates were too high or too low and the lawfulness of the present differentials was not determined by the Commission.

II.

THE DECREE OF THE DISTRICT COURT SHOULD BE AFFIRMED AS THE COMMISSION ACTED ARBITRARILY AND BEYOND ITS STATUTORY POWER, AND THE ORDER WAS NOT SUPPORTED BY APPROPRIATE FINDINGS OR BY SUBSTANTIAL EVIDENCE.

The appellants argue that the District Court simply reviewed the evidence and arrived at different conclusions than did the Commission. We have pointed out that the order is not supported by basic or essential findings and that there was no substantial evidence of the unlawfulness of the proposed rates. The District Court so found. (R.

56). While the court will not review disputed questions of fact, it will review questions of law, such as whether or not the Commission made essential findings or whether the findings were supported by evidence or were contrary to the evidence.

The statute, Section 46, of Title 28 of the United States Code (Judicial Code, Section 208) specifically authorizes suits to enjoin, set aside, annul or suspend an order of the Interstate Commerce Commission.

> "The provision for a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance with it. To refuse to consider evidence introduced or to make an essential finding without supporting evidence is arbitrary action."
>
> *Chicago Junction Case,* 264 U. S. 258, 265.

And as stated in *Interstate Commerce Commission* v. *L. & N. Railway Company,* 227 U. S. 88, at page 92:

> "Under the statute the carrier retains the primary right to make rates, but if, after hearing, they are shown to be unreasonable, the Commission may set them aside and require the substitution of just for unjust charges. The Commission's right to act depends upon the existence of this fact, and if there was no evidence to show that the rates were unreasonable, there was no jurisdiction to make the order. * * * The legal effect of evidence is a question of law. A finding without evidence is beyond the power of the Commission, and the order based thereon is contrary to law and must, in the language of the statute 'be set aside by a court of competent jurisdiction.' 36 Stat. 551."

And if the authority therein involved has been exercised in an unreasonable manner so as to cause it to be within the elementary rule that "the substance and not the shadow determines the validity of the exercise of the power", it is void. *Interstate Commerce Commission* v. *Union Pacific,* 222 U. S. 541, 547.

While the Commission is not limited by the strict rules

as to the admissibility of evidence which prevail in suits between private parties,

> "the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended. In such cases the Commissioners cannot act upon their own information as could jurors in primitive days. All parties must be fully apprised of the evidence submitted or to be considered * * *. In no other way can it test the sufficiency of the facts to support the finding; for otherwise, even though it appeared that the order was without evidence, the manifest deficiency could always be explained on the theory that the Commission had before it extraneous, unknown but presumptively sufficient information to support the finding."
>
> *Interstate Commerce Commission* v. *L. & N. Railway Company*, 227 U. S. 88, 93.

We have already referred to the rule that the order must be accompanied by essential findings. *Florida* v. *United States*, 282 U. S. 194; *Beaumont, Sour Lake & Western Railway Company* v. *United States*, 282 U. S. 74; *Norwegian Nitrogen Products Corporation* v. *United States*, 288 U. S. 294.

The District Court had before it the entire record made before the Commission. The court analyzed the evidence and arrived at the conclusion that the order was not supported by substantial evidence. The evidence has been reviewed in other sections of this brief. The conclusion of the District Court, criticised by the appellants, that the testimony of Mr. DeCamp did not constitute substantial evidence that the carriers would suffer revenue losses, was purely a law question. The court has the right to pass upon the legal effect and the competency of the evidence.

In criticising the District Court's decision, the Government, to support its contention that there was substantial evidence, says on page 49:

> "The Commission approached the instant proceeding

> with an intimate knowledge of important facts, concerning competition, transportation conditions affecting both the carriers and the rates, the finely balanced differential relationships between the various groups in each State, and the long-standing relationships between the groups of mines in the respective States."

And then it cites and quotes from the Commission's decisions. We submit that the "intimate knowledge" of the Commission was not substantial evidence and that the consideration by the Commission of facts outside of the record violates the rule announced by this court.

We have examined with care reference made by appellants to parts of the record upon which they rely in support of the contention that there was substantial evidence supporting the order, and we respectfully submit that the conclusion at which appellants arrive is based on extraneous matters and assumptions which cannot be dignified as evidence. We submit that the appellants have wholly failed to point out wherein the District Court erred. The District Court was clearly right in holding that there was not substantial evidence in the record upon which important rights could be determined and that the order was void.

III.

THE COMMISSION DID NOT EXERCISE ITS POWER TO PRESCRIBE A MINIMUM RATE UNDER SECTION 15 (1) OF THE ACT.

The appellants devote attention to the proposition that the Commission is empowered by the Act to prescribe minimum rates. This is not disputed, nor is it an issue in this proceeding. Prior to the passage of the Transportation Act of 1920, the Commission did not have the power to condemn rates because unreasonably low. *Skinner & Eddy Corporation* v. *United States,* 249 U. S. 557, 565.

Since the amendment of Section 15 (1) by the Transpor-

tation Act of 1920, the Commission is empowered after full hearing, to prescribe the maximum or minimum, or maximum and minimum rate to be charged. In this proceeding the Commission did not fix a minimum rate or any rate, although it admitted that the rates might need correction. (R. 12). The Commission could have either on complaint or on its own investigation after hearing, prescribed minimum rates, not only from mines located on the Milwaukee railroad, but from mines in the related areas. In this proceeding, however, there was no evidence from which the Commission could have exercised its minimum rate making power. It is admitted that there was no evidence that the rates were less than compensatory and there was no evidence or contention that they were so low as to cause a burden on other traffic. With reference to the power to prescribe minimum rates, this court has said in *Texas & Pacific Railway Company* v. *United States*, 289 U. S. 627, 633:

> "The evidence failed to show that the rates of the Texas & Pacific and the L. R. & N. on export and import shipments to and from New Orleans were not compensatory. The Commission refused to find that they were so low as to cast a burden on other traffic. There was, therefore, no basis for an order fixing minimum reasonable rates under Section 15 (1) of the Act."

IV.

THE COMMISSION'S POWER TO PRESCRIBE RATES UNDER SECTION 15-A (2) OF THE ACT AS AMENDED.

The appellants discuss at some length the power of the Commission to prescribe just and reasonable rates under Section 15-a (2) of the Act as amended. We believe that the question as to whether or not the Commission's power was restricted by the enactment of the amendment is immaterial, as there was no evidence and the District Court so

found, that the proposed rates of the Milwaukee, if permitted to become effective, would adversely affect the earnings of the Milwaukee and any other railroad. (R. 53)

It is immaterial to the issues in this proceeding whether the District Court correctly interpreted the effect of the amendment. It must be admitted sound reasons may be advanced for the conclusion that a new rule for rate making was intended. The original act contained the so-called "recapture clause" and "the purpose of the changes in 15-a is not left in doubt. They were made with the manifest object of eliminating the provisions for the recapture of excess income of the carriers and the revising of the rule as to rate making. The requirement imposed by the Transportation Act, 1920, for the adjustment of rates according to groups was abolished * * *." *Florida* v. *United States*, 292 U. S. 1, 6.

While the Court held in *Florida* v. *United States, supra,* that "neither the elimination of the group method of rate making, nor the substituted rule" impaired the Commission's authority over intrastate rates under Section 13 of the Act, it did recognize that a change in the rule of rate making had been expressed.

The appellants cite the decision of the District Court in *Jefferson Island Salt Mining Co.* v. *United States,* 6 Fed. (2) 315, to support the contention that the Commission can prescribe minimum rates under Section 15-a (2) though lower rates are not shown to be non-compensatory. Though that case was decided in 1925 and before the amendment, we submit that there is nothing in the decision which lends support to the contention that the Commission's order herein is lawful. In that case the court reviewed an order of the Commission in which the rates and the relationship in the rates on salt were prescribed from many origins in different parts of the country to a large destination territory. We may assume and the District Court so held, that the

Commission had before it a record upon which such an order could lawfully be based.

That situation was very different than that before the Commission in this proceeding. Here the Commission required the cancellation of rates which would change relationships which the Commission had not prescribed and had not found to be lawful. Whether the Commission can now under the Act as amended prescribe rates so that carriers within a rate group "will under honest, efficient and economical management" earn a "fair return upon the aggregate value of the railway property of such carriers" is not an issue for the Commission did not prescribe such rates.

Conclusion.

The Commission misconceived its jurisdiction and has attempted to exercise power not delegated to it. It has ordered the cancellation of rates not shown to be unreasonable or otherwise unlawful. The effect of the order is to deny to the Milwaukee the right to exercise its managerial judgment and to so adjust its rates that it can continue to fairly compete in the transportation of coal to important consuming markets. The decree of the court below should be affirmed.

Respectfully submitted,

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J. N. Davis,
Of Counsel.
Chicago, Illinois,
January 7, 1935.

APPENDIX.

INVESTIGATION AND SUSPENSION DOCKET NO. 3843

COAL FROM INDIANA TO ILLINOIS.

Submitted October 5, 1933. Decided November 8, 1933.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS AITCHISON, PORTER, AND TATE.

TATE, *Commissioner:*

Exceptions to the proposed report were filed by respondent to which replies were made by the protesting carriers and by the Illinois Coal Traffic Bureau, and the case was orally argued.

By schedules filed to become effective on December 23, 1932, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter called the Milwaukee, proposed to reduce the rates on bituminous coal, in carloads, from mines on its line in the Brazil-Clinton and Linton-Sullivan origin groups in Indiana to Rockford and Freeport, Ill., and to certain points intermediate thereto in that State. Upon protests filed by the Illinois Commerce Commission, certain competing carriers, and individual operators and coal-mining organizations in Illinois, the schedules were suspended until July 23, 1933. By voluntary action of respondent the effective date has been further postponed until January 23, 1934. Rates will be stated in amounts per net ton.

Southern Illinois is the principal coal-producing territory in Illinois, and the southern Illinois group, one of the several groups in that portion of the State, is considered the base group to destinations in northern Illinois and the Northwest. The rates from other Illinois groups and from western Kentucky are based differentially on those from the southern Illinois group. For many years prior to 1930 the coal rates from the Springfield group in Illinois and the Brazil-Clinton group in Indiana to the destinations here considered were maintained on a parity, 30 cents under those from the southern Illinois group. The rates from the other Indiana groups were and are made of differentials

over those from the Brazil-Clinton group. On August 20, 1930, by order of the Illinois Commerce Commission, the intrastate rates from the southern Illinois and Springfield groups were reduced from $2.17 to $2 and from $1.87 to $1.70, respectively, a reduction of 17 cents in each instance.

The present rate from the Brazil-Clinton group to Rockford and Freeport is $1.87, and from the Linton-Sullivan group $1.92. The Milwaukee proposed to reduce both of those rates 17 cents, to $1.70 and $1.75, thereby again placing the Brazil-Clinton group rate on a parity with that from the Springfield group, and basing the rate from the Linton-Sullivan group on the present differential of 5 cents over that from the Brazil-Clinton group. Reductions to the level of the rates proposed to Rockford and Freeport were also proposed to intermediate destinations.

Respondent considers all of the rates from Illinois, Indiana, and western Kentucky to this destination territory as less than reasonable maxima. But it feels that by reason of the lower rates from the Illinois groups it is being deprived of tonnage which could well move from mines on its lines in the Brazil-Clinton and Linton-Sullivan groups. It points out that although certain of its lines form through routes from those origin groups to Rockford and the other destinations here considered, they also afford the shortest routes from the Illinois groups in connection with other carriers, and that it is required to join in the lower intrastate rates therefrom on coal moving in competition with that from mines on its Indiana lines.

An exhibit introduced by the Illinois Central Railroad Company, protestant, indicates that the volume of coal moved to Rockford in 1932 from the southern Illinois group was 42.7 percent of that moved in 1929, from the Springfield group 245 percent, from the Brazil-Clinton group 141.1 percent, and from the Linton-Sullivan group 24.6 percent, from all groups in Illinois 53.4 percent, and from all groups in Indiana 87.7 percent. The same exhibit indicates that the volume of coal moved to Rockford in 1931 from the southern Illinois group was 54.3 percent of that moved in 1929, from the Springfield group 187.7 percent, from the Brazil-Clinton group 208.2 percent, from the Linton-Sullivan group 11.9 percent, from all groups in Illinois 58.4 percent, and from all groups in Indiana 88.7 percent. The carrier used 1929 for this comparison because that was the first full year prior to the reductions in the Illinois intrastate

rates, effective in the fall of 1930. At the argument the Milwaukee excepted to the percentage of 141.1 given by the Illinois Central as representing the 1932 movement of coal over that of 1929 from the Brazil-Clinton group to Rockford. The exception was based on a statement made at the hearing by an official of a coal company in that origin group that his company alone shipped more than twice the amount of coal shown in the exhibit as having moved from that group to Rockford in 1929. If the exhibit is in fact incorrect, no definite figures were given to show the extent of the error. The general statement of the Milwaukee that the 1929 movements from the Brazil-Clinton and Linton-Sullivan groups, as shown in the exhibit, were transposed cannot be accepted as definitely showing the movements from the two origin groups.

The Milwaukee urged that as the reduced rates were proposed to apply only from mines on its Indiana lines, the matter now before us relates only to the rates from those mines. It further stated that whatever action may be taken by the other lines serving the two origin groups toward meeting the proposed rates would be immaterial, as 95 to 99 percent of the coal moving therefrom to Rockforl and Freeport moves over its lines. We cannot subscribe to that statement, insofar as it relates to the pertinency of any action which might be taken by the other lines in the groups to meet reduced rates established by the Milwaukee. We have refused to find proposed reductions in rates justified when it is shown that they would be harmful to the rate structure as a whole. *Container Service,* 173 I. C. C. 377, page 430.

An exhibit introduced at the hearing indicates that six lines, in addition to the Milwaukee, serve either one or both of the Brazil-Clinton and Linton-Sullivan groups. The rates from the lower Indiana coal groups are generally based differentially on those from the Brazil-Clinton group. Witnesses expressed the view that if the proposed reduced rates are established by the Milwaukee similar reductions will be made, for competitive reasons, by other carriers in the same groups, and that reductions will be sought also from the lower Indiana groups. We are of the opinion that the grouping of the Indiana rates upon differential relationships cannot be ignored in the determination of this case.

In *Intrastate Rates on Bituminous Coal in Illinois,* 182 I. C. C. 537, we stated that some of the rates therein as-

sailed from Illinois groups to Rockford and Freeport were well below the reasonable level of rates in that territory, but that the same seemed to be true of most of the rates from the Indiana groups to the same destinations. We pointed out that from the more distant Indiana groups to those destinations and to Dixon, Ill., the rates ranged as low as 56 percent of the scale prescribed in *Holmes & Hallowell Co.* v. *G. N. Ry. Co.*, 69 I. C. C. 11, and stated that sufficient justification had not been shown for requiring any of the intrastate rates to the destinations mentioned to be increased until the low rates from Indiana were placed on a level more nearly commensurate with the general level of rates in that territory.

At pages 549 and 550 of *Intrastate Rates on Bituminous Coal in Illinois, supra,* comparisons were made of the percentage relationships of the rates from the southern Illinois and Brazil-Clinton groups to Rockford and Freeport with those under the Holmes & Hallowell scale. For example, the rate from the southern Illinois group to Freeport is there shown as 64 percent, and from the Brazil-Clinton group to the same destination 67 percent, of the rates for similar distances under that scale. However, it now appears that the distance upon which the southern Illinois relationship was based was the short-line distance from that group, and that the Brazil-Clinton relationship was based on the average of the distances from all mines in the group. The following table, computed from distances taken from the present record, and apparently representing fairly the average of the short tariff routes from all origins on all lines in the groups, shows the percentage relationships of the rates from the origin groups indicated to Rockford and Freeport to the rates for similar distances under the Holmes & Hallowell scale.

Groups	To Rockford			To Freeport		
	Rate	Distance	Relation to Holmes & Hallowell scale	Rate	Distance	Relation to Holmes & Hallowell scale
		Miles	*Percent*		*Miles*	*Percent*
Springfield	$1.70	237.9	68.5	$1.70	261	63.7
Southern Illinois	2.00	365	60.9	2.00	384	58.8
Brazil-Clinton [1]	1.87	272	68.5	1.87	304	64
Linton-Sullivan [1]	1.92	298	67.1	1.92	327	63.1

[1] Respondent seeks to establish rates of $1.70 from the Brazil-Clinton group and $1.75 from th Linton-Sullivan group.

As previously pointed out, the Milwaukee seeks to establish the proposed rates of $1.70 and $1.75 not only to Rockford and Freeport, but also to stations on its lines in Illinois intermediate thereto.[1] It urges that any comparison of the distances and rates from the Indiana groups with those from Illinois should include such intermediate points. The average short tariff routes from all origins on all lines in the Springfield and Brazil-Clinton groups to all of the destinations named in the footnote average 252 and 257 miles respectively. To the last four destinations named, in the eastern portion of Illinois, the average distance from the Brazil-Clinton group, 231 miles, is less than that from the Springfield group by 11 miles. The average distances to all of the other stations named are 258 miles from the Springfield group and 274 miles from the Brazil-Clinton group. The table above shows that to Rockford and Freeport the average distances from the Springfield group are 34.1 and 43 miles, respectively, less than those from the Brazil-Clinton group.

The stations on the Milwaukee to which the reduced rates have been proposed do not take a group rate from the Brazil-Clinton group. The rate to De Kalb is $1.74, to Rockford and Freeport $1.87, and to all other points shown in the footnote $1.80, except that to Forreston, Byron, and Davis Junction the rate is $1.87 over the circuitous route in connection with the line of the Pennsylvania Railroad Company. The Milwaukee's proposal herefore involves a reduction of 17 cents in the rates from the two origin groups to Rockford and Freeport, as compared with a reduction of only 4 cents to De Kalb and 10 cents to the other intermediate points, with the exception of the rate over the circuitous route of the Pennsylvania as mentioned above. We are of the opinion that the distances from the Brazil-Clinton group to Rockford and Freeport, rather than those to all of the stations in the footnote, afford the proper basis for comparison.

Only the rates from mines on the Milwaukee in the Brazil-Clinton and Linton-Sullivan groups are before us in this proceeding. The immediate effect of the Milwaukee's proposal would be to split those groups, with lower rates

1. The principal stations on the Milwaukee between Rockford and Freeport and the Indiana border, as indicated by an exhibit of record, are Forreston, Byron, Davis Junction, Kirkland, Genoa, Elgin, Bensenville, and De Kalb, Ill.

from mines on that line than from mines on competing lines in the same groups. As pointed out herein, it is suggested by protestants that this condition would not long prevail, as the other carriers in those groups would propose similar reduced rates for competitive reasons. Such reductions would destroy the differential relationships now existing as between those groups and the other Indiana groups and western Kentucky, with the probability of mines and carriers in such other groups seeking similar reductions. This would result in a level of rates from the Indiana groups lower than that which we stated, in *Intrastate Rates on Bituminous Coal in Illinois, supra,* to be well below the reasonable level of rates in this territory.

While it may be, as the Milwaukee states, that the rate situation as between the two Indiana groups and Illinois groups is in need of correction, we are not at all convinced that the proposed rates would afford a lawful solution of the problem. To the contrary, we are convinced that any change in the present relationships in the Indiana-Illinois adjustment to these northern Illinois destinations should not be undertaken in the piecemeal manner here proposed.

We find that the proposed schedules have not been justified. An order will be entered requiring their cancellation and discontinuing this proceeding.

INVESTIGATION AND SUSPENSION DOCKET No. 3843.

COAL FROM INDIANA TO ILLINOIS.

Submitted April 6, 1934. Decided April 18, 1934.

REPORT OF THE COMMISSION ON ARGUMENT AND RECONSIDERATION.

TATE, *Commissioner:*

In the original report in this proceeding, 197 I. C. C. 245, division 2 found not justified the proposed reduced rates on bituminous coal, in carloads, from mines on the line of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, hereinafter called the Milwaukee, in the Brazil-Clinton and Linton-Sullivan origin groups in Indiana to Rockford and Freeport, Ill., and to certain points intermediate thereto in Illinois. An order was entered directing that the suspended schedules be canceled on or before January 22, 1934, and the proceeding discontinued. On January 2, 1934, the respondent filed a petition for rehearing, reargument and reconsideration before us, and for an extension of the effective date of the order. On January 5, 1934, the effective date of the order was postponed until February 22, 1934, but we denied the petition all other respects. Respondent then filed a petition in the District Court of the United States for the Northern District of Illinois, Eastern Division, seeking to enjoin the order entered by division 2. That petition was to have been heard on February 21, 1934, but the date for hearing has been postponed from time to time until April 20, 1934. On February 20, 1934, we further postponed until April 23, 1934, the effective date of the outstanding order, and on March 7, 1934, we reopened the proceeding for argument before us, which has been had. The facts are largely stated in the original report, and any so stated will be repeated herein only to the extent necessary. Rates and differentials in rates will be stated in amounts per net ton.

The coal areas in Indiana and Illinois are divided into several groups from which group rates apply. The principal Indiana groups are Brazil-Clinton, Linton-Sullivan, Princeton, and Boonville. The principal Illinois groups,

with which we are here concerned, are Springfield and southern Illinois. Keen competition in the sale of coal exists between the Indiana groups on the one hand, and the Illinois groups on the other hand, and also between the individual groups in each of the States named, at the destinations here considered. The rates from the various origin groups in Illinois are definitely related to each other. They are generally in conformity with the findings in the *Illinois Coal Cases, 1920,* 62 I. C. C. 741, and 64 I. C. C. 751. The rates from the various Indiana groups are closely related to the rates from the Illinois groups and are also differentially related to each other, but in general these relations have not been fixed by us. A differential of 35 cents over the southern Illinois group was fixed from western Kentucky to northern Illinois points, among others, in *Illinois-Indiana Coal Cases,* 128 I. C. C. 265, and recently affirmed in *West Kentucky Coal Bureau* v. *Illinois Central R. Co.,* 172 I. C. C. 279.

Southern Illinois is the principal coal-producing territory in Illinois, and the southern Illinois group, one of the several groups in that portion of the State, is considered the base group to destinations in northern Illinois and the Northwest. The rates from other Illinois groups and from western Kentucky are based differentially on those from the southern Illinois group. For many years prior to 1930 the coal rates from the Springfield group in Illinois and the Brazil-Clinton group in Indiana to the destinations here considered were maintained on a parity, 30 cents under those from the southern Illinois group. The rates from the other Indiana groups were and are made of differentials over those from the Brazil-Clinton group. On August 20, 1930, by order of the Illinois Commerce Commission, the intrastate rates from the southern Illinois and Springfield groups, among others, were reduced from $2.17 to $2 and from $1.87 to $1.70, respectively, a reduction of 17 cents in each instance, thus destroying the parity that had existed prior to that date, between the rates from the Indiana groups on the one hand, and the Illinois groups on the other. Like reductions were later published from the western Kentucky group so as to preserve the relation with the southern Illinois group prescribed in *Illinois-Indiana Coal Cases, supra.*

Subsequent to the reduction in the Illinois intrastate rates, the principal carriers, including respondent herein,

operating within the State of Illinois, filed a complaint with us, in which it was alleged that the reduced rates, hereinbefore referred to, on bituminous coal, in carloads, prescribed by the Illinois Commerce Commission were in violation of section 13 of the Interstate Commerce Act. They asked us to find that the rates assailed were unlawful and would cause an undue and unreasonable advantage, preference, and prejudice as between persons and localities in intrastate commerce on the one hand, and in interstate commerce on the other, and an undue, unreasonable and unjust discrimination against interstate commerce. Specific comparisons were made of the rates assailed from the Illinois groups to Rockford, Freeport, and other destinations with the rates from the Indiana groups to the same destinations. In the decision therein, *Intrastate Rates on Bituminous Coal in Illinois*, 182 I. C. C. 537, hereinafter called the *Illinois Case*, we found that the rates assailed on bituminous coal, in carloads, from mines in Illinois to Rockford, Freeport and other points, should not be found unlawful under section 13 of the act until and unless the interstate rates from Indiana groups to the same destinations were increased to a level more nearly commensurate with the general level of the rates on coal in that territory. Based on the rate comparisons introduced in that proceeding, we stated:

> While it is evident that a number of the assailed rates from Illinois groups to Rockford, Freeport, and Dixon are well below the reasonable level of rates in this territory, that appears to be true also of most of the rates from the Indiana groups to the same destinations. For example, the rate from the Brazil-Clinton group to Dixon is only 66.5 per cent of the Holmes & Hallowell scale, which is the same percentage of that scale as is reflected by the assailed rate from southern Illinois to Dixon; and the rate from Brazil-Clinton to Freeport is only 67 per cent of the scale, as compared with 64 per cent from southern Illinois to Freeport and 66 per cent from southern Illinois to Rockford. Rates from the more distant Indiana groups to these three destinations range as low as 56 per cent of the scale. The Illinois producers urge with much force that their rates to Rockford, Freeport, and Dixon should not be increased so long as such low rates from the Indiana groups to the same destinations are permitted to con-

tinue. The principal competition of the Illinois producers at these destinations comes from Indiana, and we find no sufficient justification for requiring any of the Illinois rates to these points to be increased until the low rates from Indiana referred to have been placed upon a level more nearly commensurate with the general level of rates in this territory.

In that proceeding several carriers, including respondent herein, introduced testimony to the effect that not only were the rates prescribed by the Illinois Commerce Commission too low, but that even the interstate rates from the Indiana mines were lower than reasonable maximum rates.

After the decision in the *Illinois Case,* the Milwaukee proposed to reduce the rates from mines on its line in the Brazil-Clinton and Linton-Sullivan groups to the destinations here considered, to the same extent that reductions were made in the intrastate rates in Illinois. Upon protests of several carriers, and Illinois coal operators, we suspended the proposed reduced rates which constitute the issue for determination in this proceeding.

The present rates to Rockford and Freeport from the Brazil-Clinton and Linton-Sullivan groups are $1.87 and $1.92 respectively. The Milwaukee proposes to reduce both of those rates 17 cents, to $1.70 and $1.75 from mines on its line, thereby again placing the rates from the Brazil-Clinton group on the parity which existed prior to August 20, 1930, with the rate from the Springfield group, and basing the rate from the Linton-Sullivan group on the present differential of 5 cents over the rate from the Brazil-Clinton group. Reductions to the level of the rates proposed to Rockford and Freeport are also proposed to intermediate destinations. In view of our finding in the *Illinois Case,* it is obvious that prior to August 20, 1930, producers in the Indiana groups had an advantage over their Illinois competitors at the destinations here considered which the proposed reduced rates from the Indiana groups would reestablish.

In the instant proceeding respondent again testified that all of the rates from Illinois, Indiana, and western Kentucky to the destinations here considered were less than reasonable maxima, thus corroborating the testimony introduced in the *Illinois Case.* For example, at the hearing,

Mr. J. T. Averitt, Coal Traffic Manager for the Milwaukee, testified on direct examination, in part, as follows:

> Let me say at the outset I shall not contend that the rates which are in effect from the two districts in Indiana served by our company are more than reasonable rates. As a matter of fact, they are less than reasonable maximum rates as are all the rates from Illinois, Indiana and Western Kentucky measured by any test evolved by the Commission in recent years. I do contend, however, for an equality of opportunity in these markets for the mines served by the Chicago, Milwaukee, St. Paul & Pacific Railroad, which, all conditions considered, they are entitled to have.
>
> Accordingly, rates were reduced from mines served by respondent from its Clinton and Linton, Indiana, groups in the same amount as they were required to be reduced from Illinois under orders of the Illinois Commerce Commission.

On cross-examination, Mr. Averitt testified, in part, as follows:

> "Q. (By Mr. Cardy) Mr. Averitt, as I understand it, the present rates from the Brazil-Clinton and Linton-Sullivan districts to Rockford, you say, are really less than reasonable maximum rates.
>
> A. I beg your pardon; I did not hear that.
>
> Q. I say, as I understand it, you say that even the present rates are less than reasonable maximum rates,—
>
> A I think that all of the rates in Illinois, Indiana and Western Kentucky, to Rockford and Freeport, are less than reasonable maximum rates"

Respondent contends, however, that by reason of the lower rates from the Illinois groups it is being deprived of tonnage that could well move from mines on its lines in the Brazil-Clinton and Linton-Sullivan groups, which it now attempts to regain by reducing its rates from those groups, despite the fact that it has testified that the present rates are lower than reasonable maximum rates. It points out that although certain of its lines form through routes from those origin groups to Rockford and the other destinations here considered, they also afford the shortest routes from the Illinois groups in connection with other carriers, and that it is required to join in the lower intrastate rates on

coal moving from mines in Illinois in competition with coal from mines on its Indiana lines on which it would perform the entire haul, and consequently receive the entire transportation charges.

An exhibit, as corrected at the argument, introduced by the Illinois Central Railroad Company, protestant, indicates that the volume of coal moved to Rockford in 1932 from the southern Illinois group was 42.7 percent of that moved in 1929, from the Springfield group 245 percent, from the Brazil-Clinton group 39.6 percent, and from the Linton-Sullivan group 88.1 percent, from all groups in Illinois 53.4 percent, and from all groups in Indiana 87.7 percent. The same exhibit indicates that the volume of coal moved to Rockford in 1931 from the southern Illinois group was 54.3 percent of that moved in 1929, from the Springfield group 187.7 percent, from the Brazil-Clinton group 58.4 percent, from the Linton-Sullivan group 42.5 percent, from all groups in Illinois 58.4 percent, and from all groups in Indiana 88.7 percent. The carrier used 1929 for this comparison because that was the first full year prior to the reductions in the Illinois intrastate rates. The increase in the tonnage of coal from the Springfield group to Rockford during 1931 and 1932 over the tonnage shipped in 1929 resulted from the distribution of coal for relief purposes at Rockford which coal was purchased at mines in the Springfield group because of the low prices prevailing in that group. This exhibit was introduced for the purpose of showing that, with the exception of the coal shipped from the Springfield group to Rockford for relief purposes, the decrease in the value of traffic from the Indiana mines to the destinations here considered, during 1931 and 1932, compared with the 1929 traffic (the year prior to the reduction in the rates from the Illinois mines), was less than the decrease in the movement from the Illinois mines to the same destinations during the same period. On the record we are of the opinion that the percentage of the tonnage from the Indiana groups to the destinations herein considered during the period shown had not decreased as a result of the reduced rates from the Illinois groups.

It appears that the distance, shown in the *Illinois Case*, upon which the southern Illinois relation was based was the short-line distance from that group, and that the Brazil-Clinton relation was based on the average of the dis-

tances from all mines in the group. The following table, computed from distances taken from the present record, and apparently representing fairly the average of the short tariff routes from all origins on all lines in the groups, shows the percentage relations of the rates from the origin groups indicated to Rockford and Freeport to the rates for similar distances under the Holmes & Hallowell scale:[1]

Groups	To Rockford			To Freeport		
	Rate	Distance	Relation to Holmes & Hallowell scale	Rate	Distance	Relation to Holmes & Hallowell scale
		Miles	*Percent*		*Miles*	*Percent*
Springfield	$1.70	237.9	68.5	$1.70	261	63.7
Southern Illinois	2.00	365	60.9	2.00	384	58.8
Brazil-Clinton	1.87(a)	272	68.5	1.87(a)	304	64
Brazil-Clinton	1.70(b)	272	62.3	1.70(b)	304	58.2
Linton-Sullivan	1.92(a)	298	67.1	1.92(a)	327	63.1
Linton-Sullivan	1.75(b)	298	61.2	1.75(b)	327	57.6

(a) Present.
(b) Proposed.

The Milwaukee objects to the use of the average distances as shown in the above table. It contends that the distances should be computed over its direct route and only from the mines on its line. For example, from mines on its line in the Brazil-Clinton group, the average distance over its direct route to Rockford is 231 miles. It compares the proposed rate of $1.70 from the Brazil-Clinton group to Rockford for 231 miles with a like rate from the Springfield group to Rockford for the average distance from all origins and over all routes, in an attempt to prove that the proposed rate from the Brazil-Clinton group is higher, distance considered, than the rate from the Springfield group. Such a comparison is worthless because like things are not compared. If the short tariff distances from mines on the Illinois Central in the Springfield group were used in comparison with the distance of 231 miles from mines on the Milwaukee in the Brazil-Clinton group, the comparison would favor the Springfield group from which the short tariff distance to Rockford is 199 miles. Such a method of computing distances would tend to destroy all groupings and cannot be adopted.

The Milwaukee urged that as the reduced rates were

1. *Holmes & Hallowell Co. v. G. N. Ry. Co.*, 69 I. C. C. 11.

proposed to apply only from mines on its Indiana lines, the matter now before us relates only to the rates from those mines. It stated that whatever action may be taken by the other lines serving the two origin groups toward meeting the proposed rates would be immaterial, as approximately 95 per cent of the coal moving therefrom to Rockford and Freeport moves over its lines. We do not agree with that statement, insofar as it relates to the pertinency of any action which might be taken by the other lines in the group to meet reduced rates established by the Milwaukee. The record indicates that six carriers, in addition to the Milwaukee, serve either one or both of the Brazil-Clinton and Linton-Sullivan groups. The proposal of the Milwaukee, if permitted to become effective, would not only disrupt the long-existing differential relation between the several Indiana groups, but it would also have the effect of splitting up the Brazil-Clinton and Linton-Sullivan groups, with lower rates from mines on the Milwaukee in these groups than from mines in the same groups and in the same immediate vicinity on the lines of other competitive carriers.

The coal-producing area in Indiana, consisting of several groups, extends southward from the Brazil-Clinton group (the so-called base group) to the Ohio River. The rates from the more-distant southern groups are based differentially over those from the Brazil-Clinton group. To the destinations here considered the rates from the Linton-Sullivan, Princeton, and Boonville groups are 5, 12, and 15 cents, respectively, higher than the rates from the Brazil-Clinton group. Stated otherwise, rates from the Linton-Sullivan group are 5 cents higher than rates from the Brazil-Clinton group; rates from the Princeton group are 7 cents higher than rates from the Linton-Sullivan group; and rates from the Boonville group are 3 cents higher than the rates from the Princeton group. This differential relation has been voluntarily established by the carriers, including respondent herein, serving the Indiana groups. The proposed reductions would increase the above differentials of 12 and 15 cents from the Princeton and Boonville groups to 29 and 32 cents, respectively, over the Brazil-Clinton group. On the other hand, if the suspended rates are permitted to become effective, and the present differential of 15 cents over Brazil-Clinton group rate is maintained, the rate from the Boonville group to the

destinations here considered would become 15 cents less than the rate from the southern Illinois group, although the distance is approximately 50 miles less from the latter group, thus tending to precipitate further reductions in the Illinois intrastate rates.

It is true, the rates from the more-distant southern Indiana groups are relatively lower, distance considered, than the rates from the Brazil-Clinton and Linton-Sullivan groups, but as the trend of the traffic is to the important markets to the north and northwest of the coal-producing areas, the existing relation is apparently for the purpose of enabling producers in the more-distant southern groups to compete in these markets with producers in the northern groups. Where a group relation has existed for many years, it should not be disrupted except upon very substantial evidence of which this record is devoid. Witnesses expressed the view that if the proposed reduced rates are permitted to become effective, similar reductions will be made, for competitive reasons, by other carriers in the same groups, and that reductions will be sought also from the more-distant southern Indiana groups.

Referring to the proposed reductions, Mr. R. P. De Camp, General Commerce Agent of the Illinois Central, testified in part as follows:

> • • • I firmly believe that if these reductions are confirmed and approved by the Interstate Commerce Commission, the ink will not be dry upon the order vacating the suspension before tariffs of competing lines in the same district will be issued, making the same reductions. Why, it will only be a matter of time, as I see it, in such event, before the Princeton and the Boonville groups will follow with similar reductions. In fact the Indiana operators on this record contend that if this reduction goes into effect from Brazil-Clinton and Linton-Sullivan mines on the Chicago, Milwaukee, St. Paul & Pacific Railroad, it should be extended to mines in the same groups, in the same amount of reduction maintained from the other groups to observe the existing differences or differentials.
>
> Now, if that should happen, which in all probability may be, all of Indiana goes down 17 cents. How long would it be before drastic requests and strong

pressure would be exerted upon Illinois roads to make a similar reduction? Now, if that were done, which is possible, it would produce lower rates to Freeport and Rockford from the large originating groups in Illinois, than apply to Chicago. * * *

* * * * * *

* * * I wish to say that this proceeding has, as I see it, the effect of splitting a group, in that lower rates are proposed from certain mines, than from all mines. Based on years of experience I have every reason to believe that that condition could not be maintained. Other roads serving the same groups would exert every effort possible to meet the suspended rates, if they were allowed to become effective. I do not see how, therefore, the reductions could be refused from the other Indiana groups south of these in issue. For illustration, I cannot conceive that the Chicago & Eastern Illinois Railroad, which serves the Princeton group as well as the Linton-Sullivan and Brazil-Clinton groups would sit idly by and not try to adjust their rates so as to participate competitively in the destination markets here in issue. And I have every reason to believe that if a uniform reduction of 17 cents prevailed from the Indiana groups, which compete so keenly with the Illinois groups, it would only be a matter of time before the entire rate structure would be disrupted, and unnecessarily reduced. * * *

We have refused to find proposed reductions in rates justified when it is shown that they would be harmful to the rate structure as a whole, and therefore are also harmful to the public interest. *Container Service,* 173 I. C. C. 377, 430. Respondent's proposal would have such an effect. In fact it would be difficult to conceive of a proposal more likely to precipitate unwarranted changes in a keenly competitive rate structure than that here proposed. The proposal, if approved, would result in a disruption of the present long-standing differential basis of rates on bituminous coal which has been voluntarily established by the carriers, including respondent, from the related Indiana groups to the destinations here considered, and would needlessly sacrifice the revenue of the carriers serving the Indiana groups, which would be harmful to the public interest. *Coffee from New Orleans,* 182 I. C. C. 453.

In *Intrastate Rates on Bituminous Coal within Ohio,* 192 I. C. C. 413, decided May 2, 1933, we commented upon the low level of the rates on coal in Illinois territory. Therein we said, at pages 427, 428:

> It was frequently referred to in this proceeding that the reduced rates in Ohio were established on the basis of the rates prescribed for application in Illinois, * * * and from Indiana to Illinois * * *. Elaborate comparisons were made between the Ohio reduced rates and those prescribed in Illinois territory. This evidence has had our consideration. It is generally conceded that the basis of rates on coal in the Illinois territory is the lowest in the country. This has greatly been brought about by a competitive condition differing from that in the Ohio territory, although some testimony was introduced to indicate that the actual operating conditions in Illinois are not more favorable than in Ohio. Chicago, in the Illinois territory, is the greatest coal market in this country, and * * * consumes annually 30,000,000 to 35,000,000 tons of coal. It was * * * stated that the rate level to Chicago is the result of keen competition between producers of eastern coal, moved both by rail and water-and-rail, and producers of Illinois and Indiana coals. Like competition also exists between carriers that have their own rails extending from particular groups in Illinois and Indiana to Chicago and whose principal interest is to move coal from their own mines. The rates to Chicago have had a depressing effect upon other rates on bitiminous coal in this territory and have resulted in the establishment many years ago of a competitive basis of rates that is on a very low level.

In the case last cited we stated that it is generally conceded that the basis of rates on coal in the Illinois territory is the lowest in the country. In the *Illinois case* we stated that while a number of the assailed Illinois intrastate rates were well below the reasonable level of rates in that territory, that also appeared to be true of most of the rates from the Indiana groups to the same destinations. In fact, in the latter case we found that the rates from the Indiana groups were somewhat lower than the rates from the Illinois groups. Despite the above finding, the Milwaukee proposes further reductions in the rates on coal from mines

on its line in certain Indiana groups to the destinations here considered.

In the *Illinois case* we prescribed a rate of $1.95 on coal from the southern Illinois group to Chicago, Ill. Therein we found that the continuation of the reduction of 5 cents prescribed by the Illinois Commerce Commission from the Illinois groups to Chicago and a similar reduction in the interstate rates from and to those points, and from the Indiana and western Kentucky groups, would result in a net annual loss to the carriers, based on the tonnage of recent years, of more than $600,000. The record in the instant case shows that certain routes from the southern Illinois group to Rockford operate through Chicago. If the rate from the southern Illinois group to Rockford is reduced a further 17 cents, as in all probability it would be, and which protestants argue would be inevitable, it would result in a rate of $1.83 to Rockford as against a rate 12 cents higher to Chicago, an intermediate point over certain routes. Such a rate could not be maintained to Chicago without fourth section relief. It would, however, be difficult to justify such relief because Chicago is a much more important market than Rockford, and would at least be entitled to a rate no higher than the rate to Rockford. Based on the coal tonnage to Rockford in 1932 from the Illinois, Indiana and western Kentucky fields, a 17-cent reduction would result in an annual revenue loss to the carriers approximating $48,600. Should the rate to Chicago be reduced to the level of the rate to Rockford, the net annual revenue loss to the carriers, based upon the tonnage of recent years referred to in the *Illinois case,* would exceed $1,400,000.

As previously pointed out, the Milwaukee seeks to establish the proposed rates of $1.70 and $1.75 not only to Rockford and Freeport, but also to points on its lines in Illinois intermediate thereto.[2] It urges that any comparison of the distances and rates from the Indiana groups with those from Illinois should include such intermediate points. The average short tariff routes from all origins on all lines in the Springfield and Brazil-Clinton groups to all of the destinations named in the footnote average 252 and 257 miles, respectively. To the last four destinations named, in the

2. The principal stations on the Milwaukee between Rockford and Freeport and the Indiana border, as indicated by an exhibit of record, are Forreston, Byron, Davis Junction, Kirkland, Genoa, Elgin, Bensenville, and De Kalb, Ill.

eastern portion of Illinois, the average distance from the Brazil-Clinton group, 231 miles, is less than that from the Springfield group by 11 miles. The average distances to all of the other stations named are 258 miles from the Springfield group and 274 miles from the Brazil-Clinton group. To Rockford and Freeport the average distances from the Springfield group are 34.1 and 43 miles, respectively, less than those from the Brazil-Clinton group. Under the proposed rates, the ton-mile revenue from the Brazil-Clinton and Linton-Sullivan groups would be 6.2 and 6 mills, respectively, to Rockford, and 5.5 and 5.3 mills, respectively, to Freeport, as compared with ton-mile revenue of 7.1 and 6.5 mills from the Springfield group to the same respective destinations. As respondent has testified that it considers the rates from Springfield as being lower than reasonable, it is difficult to perceive how it can justify the proposed reduced rates under which the revenue would be still lower than the revenue accruing under the rates from Springfield.

The stations on the Milwaukee to which the reduced rates have been proposed do not take a group rate from the Brazil-Clinton group. The rate to De Kalb is $1.74, to Rockford and Freeport $1.87, and to all other points shown in the footnote $1.80, except that to Forreston, Byron, and Davis Junction the rate is $1.87 over the circuitous route in connection with the line of the Pennsylvania Railroad Company. The Milwaukee's proposal therefore involves a reduction of 17 cents in the rates from the two origin groups to Rockford and Freeport, as compared with a reduction of 4 cents to De Kalb and 10 cents to the other intermediate points, with the exception of the rate over the circuitous route of the Pennsylvania as mentioned above.

Only the rates from mines on the Milwaukee in the Brazil-Clinton and Linton-Sullivan groups are before us in this proceeding. The immediate effect of the Milwaukee's proposal would be to split those groups, with lower rates from mines on that line than from mines on competing lines in the same groups. As hereinbefore indicated, it was testified by witnesses on behalf of protestants that this condition would not long prevail, as the other carriers in those groups would, for competitive reasons, publish similar reduced rates. Such reductions would destroy the differential relations now existing as between those groups and the

other Indiana groups, with the probability of mines and carriers in such other groups seeking similar reductions. The reductions here proposed if permitted to become effective would result in a level of rates from the Indiana groups lower than that which we stated, in the *Illinois case*, to be well below the reasonable level of rates in this territory, and would probably lead to further reductions in the Illinois intrastate rates with like reductions in the rates from western Kentucky for the purpose of preserving the differential basis over the rates from the southern Illinois group prescribed by us, thus needlessly sacrificing the carriers' revenues and impairing their ability to render adequate and efficient railway transportation service.

In *Coal Trade Assn.* v. *Baltimore & O. R. Co.*, 190 I. C. C. 743, decided January 24, 1933, division 4 prescribed reasonable rates based on distance on bituminous coal, in carloads, from the Brazil-Clinton, Linton-Sullivan, Princeton-Ayrshire, and Boonville groups in Indiana, to destinations in eastern-central Illinois, including such points as Arcola, Champaign, Decatur, Danville, Effingham, Bloomington, and Hoopeston. The basis therein prescribed applies for distances up to and including 300 miles. For 272 and 298 miles the rates are $2.07 and $2.15, respectively, as compared with the rates of $1.70 and $1.75, respectively, proposed by respondent herein for like distances from the Brazil-Clinton and Linton-Sullivan groups, to Rockford. If the rates be extended at the rate of progression shown for the two last 25-mile blocks, they, for 304 and 327 miles, the respective distances from the Brazil-Clinton and Linton-Sullivan groups to Freeport, would be $2.23 and $2.31, as compared with rates of $1.70 and $1.75, respectively, from the Brazil-Clinton and Linton-Sullivan groups to Freeport, proposed by respondent. The rates proposed herein would approximate 82 per cent to Rockford and 76 per cent to Freeport of the rates prescribed for like distances in the above case. In addition to disrupting the differential relation existing between the several Indiana groups, the proposed rates, compared with rates recently prescribed for like distances in this general territory, would be unreasonably low.

That a rate may be unreasonable because of being too low as well as because of being too high was recognized by the Supreme Court as long ago as *Interstate Com. Commission* v. *Railway Co.*, 167 U. S. 479, 511.

In *Ex-Ohio-River Coal to Ohio Points,* 185 I. C. C. 211, proposed reduced rates on ex-river coal between points in Ohio were found not justified, chiefly because of the effects which those rates would have on the all-rail movement of coal to Ohio destinations. There the rates were not challenged as less than reasonable minima or as casting an undue burden on other traffic. Division 4 said, page 219:

> To upset or seriously to menace a general rate structure lawfully established suffices to make proposed rates calculated to effect such a disruption unreasonable and unlawful. *Trunk-Line and Ex-Lake Iron Ore Rates,* 69 I. C. C. 589. That principle was followed in *Grain and Grain Products,* 115 I. C. C. 153, with the statement that approval of the schedules there considered would inevitably lead to a disruption of the grain-rate structure, would have marked effects upon distribution and marketing, the extent of which could not be adequately foreseen, and of necessity would impair the carriers' revenues and their ability to render satisfactory service.

The reasonableness under section 1 of the act which we have thus the power and the duty to find in the rates here protested is supported by the provisions of section 15a. In *Ex-Lake Iron Ore from Chicago to Granite City,* 123 I. C. C. 503, we said:

> Plainly we are justified in condemning a rate on the ground that it is unreasonably low, where it is shown that it will cause loss rather than gain to the publishing road or roads and will thus impose a burden upon other traffic. In suspension proceedings, in view of the burden of proof, we are justified in condemning a proposed rate, protested as too low, if the carriers which sponsor it do not sufficiently show that it will cause gain rather than loss. But our authority, in our opinion, goes further. We are justified in condemning a proposed rate as too low if the evidence warrants the conclusion that it will, because of its lowness, tend to precipitate changes in rate structure or in traffic which will be harmful to the public interest, having in mind our responsibility for railroad earnings in general under section 15a.

Under Transportation Act, 1920, there was imposed on us an affirmative duty "to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States." *Railroad Commission of Wisconsin* v. *Chicago, B. & Q. R. R. Co.,* 257 U. S. 563.

That act was amended by the Emergency Transportation Act, 1933. There somewhat different language was used, as follows:

> 15a. (2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service.

The new legislation made even more imperative our duty to fix rates that will enable an adequate railway service to be maintained. As to this the effect of the amended act is: "the substituted rule of rate making by its express terms emphasizes the carriers' need of adequate revenues". "The new Act discloses no intention to weaken national control for essential national purposes over the railway system of the country. It was rather designed to aid that control in the light of the depressed economic condition of the railways." *Florida et al.* v. *United States et al.*, decided by the United States Supreme Court, April 2, 1934.

In No. 26210, *Gasoline from San Francisco Bay Points to Ogden, Utah*, ... I. C. C. ....., decided February 6, 1934, in exercising the minimum rate power conferred on us by the act, we found certain reduced rates established by the Southern Pacific Company on gasoline from refineries on and adjacent to San Francisco Bay to Ogden, Utah, and certain intermediate points to be unjust and unreasonable, and prescribed a reasonable minimum rate.

We find that the proposed rates if permitted to become effective would lead to a disruption of the rate structure on coal in the Indiana and related areas, thus impairing the revenue of the carriers serving those areas and their ability to provide the adequate and efficient transportation service contemplated by section 15a of the act; that they would cause a disruption of the individual groups from which the rates are proposed; and that they would cause a disruption of the long-standing rate relation existing for competitive purposes, between the several Indiana groups.

We find that the proposed rates would be unreasonable and in violation of sections 1 (5) and 15a (2) of the act.

The findings in the original report are affirmed.

McMANAMY, *Commissioner*, dissenting:

As stated by the majority, the order of the Illinois Commerce Commission of August 20, 1930, reducing the rates from the southern Illinois and Springfield groups, destroyed the parity which had previously existed between the rates from the Indiana groups on the one hand and the Illinois groups on the other. Like reductions have been published from the western Kentucky group to preserve the relationship with Illinois. The rates here under suspension represent an effort on the part of the Chicago, Milwaukee, St. Paul & Pacific to retain its traffic by restoring the relationship which previously existed in so far as that carrier can do so. If, as we have found, the rates prescribed by the Illinois Commission are not unreasonably low or otherwise unlawful, I am unable to see wherein the rates here involved are unlawful.

FARRELL, *Commissioner*, dissenting:

For reasons the same in substance as those stated by me in my dissenting expression in the Gasoline Case referred to in the report, No. 26210, I am unable to concur in the conclusions of the majority. The pertinent facts do not appear to me to establish a violation of paragraph (5) of section 1 of the interstate commerce act, and therefore can not indicate a violation of paragraph (2) of section 15a of the act, because the latter paragraph covers only matters to be considered by the Commission in prescribing just and reasonable rates to take the place of those it finds to be unreasonable, upon such record as may be made in the full hearing provided for in paragraph (1) of section 15 of the act.

The fact that the reductions in rates proposed by the Milwaukee will interfere with group adjustments heretofore made by and between carriers serving Indiana mines does not appear to me to be a sufficient reason for denying to the Milwaukee the right it would otherwise have under the act. Also, it will be observed that the Milwaukee is simply endeavoring to reestablish, as between mines on its lines in Indiana on the one hand and mines in the Springfield, Illinois, group on the other, the parity of rates which existed during many years prior to August 20, 1930, and that subsequent to the date mentioned the carriers serving mines in western Kentucky were permitted to make a like readjustment.

MEMORANDUM OPINION OF DISTRICT COURT.

On the fourteenth day of February, A. D. 1934, Chicago, Milwaukee, St. Paul & Pacific Railroad Company filed its bill of complaint herein praying that a preliminary or interlocutory order or injunction be entered restraining and suspending the enforcement, operation and execution of an order of the Interstate Commerce Commission by Division 2, dated the eighth day of November, A. D. 1933, Investigation and Suspension Docket No. 3843 cancelling certain proposed tariffs on bituminous coal filed with the Commission by the plaintiff and that defendant, United States of America, its officers and agents be enjoined and restrained from enforcing said order until the final determination of this case and that upon final hearing herein a decree be entered perpetually enjoining suspending, annulling and setting aside the enforcement, operation and execution of said order.

Following the filing of the bill of complaint the Commission postponed the effective date of said order until April 23, 1934. On March 7, 1934, the Commission reopened said proceedings for oral argument and consideration and on the eighth day of April, the Commission made and filed its report with its findings of fact and conclusions thereon and ordered that the order theretofore entered on the eighth of November, 1933, be affirmed. These subsequent proceedings by the Commission were brought to the attention of the court by a supplement to the original bill herein. Answers have been filed by the original defendant and intervenors, briefs and arguments submitted and the cause submitted to the court for final determination.

On the twenty-second day of November, 1933, the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, plaintiff, filed tariffs with the Interstate Commerce Commission to become effective on the twenty-third day of December, 1932, which fixed rates of $1.70 per ton on bituminous coal from mines on its railroad in Clinton District, located in Vermillion and Bigo Counties in the State of Indiana to various destinations located on its railroad in Northern Illinois including Rockford and Freeport and also fixed rates of $1.75 per ton on bituminous coal from mines on its railroad in the Linton District located in Vigo,

Sullivan, Greene and Clay Counties in the State of Indiana to each of said destinations in Northern Illinois, said rates of $1.70 and $175 per ton, respectively, constituting reductions of ten cents per ton under the rates theretofore in effect from said Clinton and Linton Districts in Indiana to eight of the said destinations, reductions of four cents per ton to five of the destinations and seventeen cents per ton to the remaining destinations, including Rockford and Freeport; that prior to the effective date of said tariffs certain associations representing coal producing interests in Illinois and certain railroads serving coal mines in Illinois and the Illinois Commerce Commission filed protests with the Commission against the said tariffs and asked the Commission to institute a proceeding inquiring into the lawfulness of the proposed rates and tariffs; that on the twenty-second day of December, 1932, the Commission entered its order suspending the operation of said proposed tariffs until the twenty-third day of July, 1933, and have since entered an order cancelling such tariffs.

It appears from the evidence taken before the Commission that for many years prior to the twentieth day of August, 1930, plaintiff was engaged in the transportation of bituminous coal from the mines in said mining districts in Indiana to destinations in Illinois, including Rockford and Freeport, and that the rates applicable for movement of said coal from said Clinton District in Indiana to Rockford, Illinois, from the first day of April, 1913 to the twentieth day of August, 1930, were the same as rates from the so-called Springfield Group in Illinois to Rockford, Illinois; that in a certain proceeding pending before the Illinois Commerce Commission said Commission by an order which became effective on the twentieth day of August, 1930, reduced the rates on bituminous coal moving intrastate from the origin mines in Illinois to Rockford and Freeport, seventeen cents per ton; that subsequently in a proceedings before the Interstate Commission under Section 13 of the Interstate Commerce Act in which it was urged that the rates required by the Illinois Commerce Commission, to be assessed as maxima for the transportation of coal from mines in that said district to Rockford and Freeport, Illinois, were unlawful and caused undue and unreasonable advantage, preference and prejudice as between persons or localities in intrastate commerce on the one hand, and interstate commerce on the other hand and as unjustly and

unreasonably discriminating against interestate commerce, a hearing was had before the Interstate Commerce Commission and said Commission (182 I. C. C. 537) refused to require the said Illinois intrastate rates to be increased. It found in that case that the rates fixed by the Illinois Commerce Commission for the hauling of bituminous coal to Rockford and Freeport should not be found unlawful under Section 13 of the Act until and unless the Interstate rates from the Indiana groups (including the Brazil-Clinton and Linton-Sullivan groups) to the same destinations were increased to a level more nearly commensurate with the general level of the rates on coal in this territory (p. 564).

In the hearing under consideration in this case on the proposed rates of the Milwaukee, while it was admitted that its present rates are below a reasonable maximum there was no evidence presented that such rates were below a reasonable minimum nor that they were non-compensatory. The Commission based its final order solely upon findings that "the proposed rates, if permitted, to become effective would lead to a disruption of the rate structure on coal in Indiana and related areas thus impairing the revenue of the carriers serving these areas and their ability to provide the adequate and efficient transportation contemplated by Section 15 (a) of the Act; that they would cause a disruption of the individual groups from which the rates are proposed; and they would cause a disruption of the long standing rate relations existing for competitive purposes between the several Indiana groups," and that the proposed rates would be unreasonable and in violation of Section 1 (5) and 15 a (2) of the Act.

There seems to be no question but that the Milwaukee is in a position to serve the mines in the Brazil-Clinton and Linton-Sullivan groups which are on its lines at a much cheaper rate than other carriers whose lines touch coal mines in the same vicinity and more cheaply than the lines in Illinois can carry coal from the Northern Illinois and Springfield groups to Rockford and Freeport. The protestants in the hearing before the Commission made no attempt to show that the proposed rates of the Milwaukee were unreasonable low for the services given. The sole contention of the protestants was that the lower rates proposed by the Milwaukee would disrupt the general rate structure on coal from the various mining groups in Indi-

ana, Kentucky and Southern Illinois. To support this contention they produced as a witness one R. R. De Camp, General Commerce Agent of the Illinois Central Railroad who testified that he firmly believed that if the proposed reduction in rates by the Milwaukee were confirmed and approved by the Commission before the ink would be dry upon the order vacating the suspension of the proposed rates of the Milwaukee new tariffs of competing lines in the same district would be issued making the same reduction and if that should happen all of Indiana would go down seventeen cents; further that he had every reason to believe that if a uniform reduction of seventeen cents prevailed from the Indiana groups which compete so keenly with the Illinois groups it would be only a matter of time before the entire rate structure would be disrupted and unnecessarily reduced.

We do not feel that a mere belief of a witness as to what may happen in the future, even if he be an expert, is entitled to much weight as evidence. The belief in this case does not appear to have been founded upon facts or scientific observation as is required of an expert in any other line before his opinion becomes competent. The finding of the Commission, however, appears to be based solely upon such expressions as to the future effect of the proposed rates of the Milwaukee.

The Commission finds, as stated above, that the proposed rates of the Milwaukee are in violation of Section 1 (5) and 15 a (2) of the Interstate Commerce Act. Section 1 (5) provides simply that "all charges made for any service rendered or to be rendered in the transportation of passengers or property * * * shall be just and reasonable." There is no evidence that the proposed rates in and of themselves are unreasonable. The carrier has a right to initiate rates. *United States* v. *Illinois Central Railroad Co.* 263 U. S. 516. There is no presumption that a rate so initiated is unreasonably low. *On the contrary the* burden is upon the party complaining to establish that fact, and in the absence of evidence the initiate rate must stand. *Anchor Coal Co.* v. *United States,* 25 F. (2) 462.

A reduction by the Milwaukee of the coal rates will, other things being equal, benefit both the consumers of coal at the points of destination and the producers of coal at the points of origin, and as said by the court in *Texas and Pac. Ry. Co.* v. *United States,* 289 U. S. 627, 638, "The Act

was passed for the protection of those who pay or bear the rates."

Further the Milwaukee has the right within the zone of reasonableness to adopt such rates as will enable it to obtain or retain desired traffic for its own lines. *Texas and Pac. Ry. Co.* v. *United States, supra.* It has a through line from coal mines in the Brazil-Clinton and Linton-Sullivan groups to Rockford, Freeport and certain intermediate destinations. It has adopted a rate which will enable those mines to undersell in the destinations mentioned, coming from mines not so favorably situated, with the result that the Milwaukee will derive a greater revenue and the buyers of coal at those destinations will obtain that commodity at a lower price. In the absence of evidence that the proposed rate is not compensatory or below a reasonable minimum there is nothing in Section 1 (5) of the Act which justifies the Commission in setting it aside.

There still remains the question whether the order of the Commission is authorized by Section *15 a (2)*. It is on this Section the Commission and the defendants herein seem principally to rely. The reason, and the only reason, given for cancelling the proposed rates is that a rate war would likely result and the present rate structure would be disrupted. As a matter of fact the rate structure was disrupted when in 1930 the Commerce Commission permitted reductions from the mines in Springfield and Southern Illinois to Freeport, Rockford and intermediate destinations.

There is no evidence in the record that the present rate structure is fair or that it is reasonable; no evidence that its disruption would necessarily lead to the introduction of unfair or unreasonable rates. Further, that situation is within the control of the Commission. It is not necessary that it sanction other changes of rates, if such new rates are below a reasonable minimum, or are non-compensatory.

Section 15 a (2) of the Act as amended in 1933 provides that the Commission, in the exercise of its power to prescribe just and reasonable rates, shall give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with furnishing such service; and to the need of revenues sufficient to enable the carriers, under honest, economical and efficient management to pro-

vide such service. There is no evidence that the proposed rates of the Milwaukee will interfere with adequate and efficient railway service. Some mention was made in the evidence of the fact that some mines in the Brazil-Clinton and Sullivan-Linton districts, a very small proportion of all the mines in the two districts are not located so they can be served by the Milwaukee but have to depend on other lines of railroad which would have to carry the coal by a much longer route and through other connecting carriers to deliver it to Rockford, Freeport and other destinations involved in this proceeding. But we do not understand the Act to mean that the Commission should compel a carrier to charge a rate higher than a reasonable minimum, and compel shippers favorably located to pay such higher rates in order to favor other mines less favorably located or to increase the revenue of other carriers having a less direct route to the destinations involved.

Defendants have called our attention to *Jefferson Island Salt Mining Co.* v. *United States,* 6 F. (2d) 315, as supporting their contentions, stating that is the only direct decision on the question of the power of the Commission to prescribe minimum rates, even in the absence of evidence that the existing rate which that minimum required to be increased was non-compensatory or in itself unreasonably low from the carrier's viewpoint. But that case was decided under Section 15a (2) as it stood after the amendment of 1920, and it was very considerably changed by the amendment of 1933. As it stood in 1920 the Commission was authorized to initiate, modify, establish or adjust rates so that carriers *as a whole* (or as a whole in each of such rate groups as the Commission might from time to time designate) would under honest, efficient and economical management earn an annual net operating income equal as near as might be to a fair return upon the aggregate value of the railway property of such carriers held for and used for in the service of transportation. There is nothing in the section as it now stands authorizing the Commission to establish rates above a reasonable minimum for one railroad merely to enable another railroad in the group not so well situated, to earn a fair return, even if the Act of 1920 did so provide. Nor is there any evidence in the record that the proposed rates of the Milwaukee if allowed to stand will so affect the earning capacity of any other railroad.

It is our opinion that the order of the Commission should be perpetually enjoined.

STATUTES.

The Interstate Commerce Act, as amended, provides in part:

SEC. 1 (5) All charges made for any service rendered or to be rendered in the transportation of passengers or property or in the transmission of intelligence by wire or wireless as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful: * * * (c. 104, 24 Stat. 379, as amended; c. 3591, 34 Stat. 584; c. 309, 36 Stat. 544; c. 91, 41 Stat. 474; U. S. C., Title 49, Sec. 1).

SEC. 15 (1) That whenever, after full hearing, upon a complaint made as provided in section 13 of this Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this Act for the transportation of persons or property or for the transmission of messages as defined in the first section of this Act, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this Act, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the

Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation or transmission other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed. (C. 91, 41 Stat. 484; U. S. C., Title 49, Sec. 15.)

15 (7). Whenever there shall be filed with the commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of property, the commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in

whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a rate, fare, or charge increased after January 1, 1910, or of a rate, fare, or charge sought to be increased after the passage of this Act, the burden of proof to show that the increased rate, fare, or charge, or proposed increased rate, fare, or charge, is just and reasonable shall be upon the carrier, and the commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible. (C. 309, 36 Stat. 551; c. 91, 41 Stat. 484; c. 510, 44 Stat. 1447; U. S. C. Sup. VII, Title 49, Sec. 15 (7).)

SEC. 15a (2) [As amended June 16, 1933]. In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service. (C. 91, 48 Stat. 220, U. S. C. Sup. VII, Title 49, Sec. 15a.)

SUPREME COURT OF THE UNITED STATES.

No. 379.—October Term, 1934.

United States of America, Interstate Commerce Commission, The Illinois Central Railroad Company, et al., Appellants, *vs.* Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Binkley Mining Company, et al., Appellees.	Appeal from the District Court of the United States for the Northern District of Illinois.

[March 4, 1935.]

Mr. Justice Cardozo delivered the opinion of the Court.

On November 22, 1932, the Chicago, Milwaukee, St. Paul & Pacific Railroad Company (referred to in this opinion as the Milwaukee) filed with the Interstate Commerce Commission a schedule of rates for the transportation of bituminous coal from mines in Indiana to destinations in northern Illinois. Upon complaint by competing railroads and producers in Illinois, the Interstate Commerce Commission suspended the proposed tariffs and afterwards annulled them. 197 I. C. C. 245; 200 I. C. C. 609. A District Court of three judges has perpetually enjoined the enforcement of the order of the Commission, thereby reinstating the tariffs established by the carrier. 8 Fed. Supp. 970. The case is here upon appeal. Judicial Code, § 210; 28 U. S. C. § 47a.

The rates in controversy affect the transportation of coal from groups of mines in Indiana known as the Brazil-Clinton and the Linton-Sullivan origin groups to Rockford and Freeport, Illinois, and certain intermediate points. Up to the effective date of the new schedule the rate to Rockford and Freeport from the Brazil-Clinton group had been $1.87 per ton, and from the Linton-Sullivan group $1.92. The proposed change called for a reduction of 17 cents, with the result that the rates between the points mentioned became $1.70 and $1.75 respectively. Reductions ranging from 4 to 10 cents were proposed for other destinations nearer to the point of origin.

In its transportation of bituminous coal the Milwaukee is in competition with lines in Illinois, Indiana and Western Kentucky. We direct our attention first to the situation in Illinois, confining ourselves to facts that have been found by the Commission. For many years there was a parity of rates between the Springfield group in Illinois and the Brazil-Clinton group in Indiana. There was also a customary differential for Illinois groups farther south than Springfield as well as for other groups in Western Kentucky. For example the rate from Springfield to Rockford was 30 cents less than from mines in southern Illinois. On August 20, 1930, these relations were broken by an order of the Illinois Commerce Commission reducing intrastate rates in Illinois 17 cents a ton. Rates from Springfield to Rockford which had been $1.87 became $1.70; those from southern Illinois, previously $2.17, became $2. Upon the publication of these reductions Milwaukee complained of them to the Interstate Commerce Commission, and asked that they be canceled. 49 U. S. C. § 13. It insisted that the lower schedule would result in undue and unreasonable advantage to persons and localities in intrastate commerce and in undue and unreasonable discrimination against those in interstate commerce. The Commission rendered its decision in March, 1932. It allowed the contested rates to stand in so far as the points of destination were Rockford and Freeport, though it found discrimination, and ordered an increase of five cents a ton, upon shipments to Chicago. *Intrastate Rates on Bituminous Coal in Illinois,* 182 I. C. C. 537. In respect of the Rockford-Freeport traffic, it held that the intrastate rates might reasonably be higher, but that the like was true of the rates to the same points from the groups in Indiana. 182 I. C. C. 537, at p. 549, 550. "The principal competition of the Illinois producers at these destinations comes from Indiana, and we find no sufficient justification for requiring any of the Illinois rates to these points to be increased until the low rates from Indiana referred to have been placed upon a level more nearly commensurate with the general level of rates in this territory." In brief the ruling was that the Interstate Commerce Commission would keep its hands off until the rates of interstate competitors had been placed upon a sounder basis. It would not stabilize rates at the then prevailing levels when the rate structure as a whole was in need of readjustment and revision. A refusal to interfere with

one of the terms of a proportion is very different from an approval of the proportion as a continuing condition. Restraints were not imposed upon the lines in Illinois, but equally they were not imposed upon those in Indiana. The decision was not a mandate to the carriers to preserve undisturbed an existing relation between rates: the decision was a refusal by the Commission to compel an increase of the rates on one side of the relation. Those on the other side were subject to change at the instance of the carriers affected to the same extent as they had been before. The forces of competition were left to do their work.

From the situation in Illinois we turn to that in Indiana and Kentucky. Again we confine ourselves to the report unless testimony is mentioned. Six carriers in addition to Milwaukee are in competition for the carriage of coal from groups in Indiana to points in northern Illinois. These lines are the means of transportation for the product of the coal mines at Princeton and Booneville. They compete also to a slight extent for the carriage of coal from the Brazil and Linton groups, though the testimony is that their traffic from those points is only 1% or less, as compared with 99% belonging to Milwaukee. For all these Indiana routes, group rates have been maintained for many years as the outcome of agreement among the carriers concerned. Rates from Linton-Sullivan were five cents higher than from Brazil-Clinton, those from Princeton seven cents higher than from Linton-Sullivan, and those from Booneville ten cents higher than from Princeton. If Milwaukee is upheld in the reduction of its own schedule from Brazil and Linton northward, there is likely to be an attempt by other Indiana carriers to make proportionate reductions from points along their lines.

The change of rates in Illinois had repercussions also upon tariffs in Kentucky. As far back as 1927, the Commission fixed a differential of 35 cents in favor of the roads from the western Kentucky mines as compared with those from the mines in southern Illinois. *Illinois-Indiana Coal Cases*, 128 I. C. C. 265; *West Kentucky Coal Bureau* v. *Illinois Central R. Co.*, 172 I. C. C. 279. Upon the lowering of intrastate rates for Illinois carriers, the western Kentucky carriers restored the preëxisting relation between themselves and their Illinois competitors by reducing their own rates to the extent of the established differential. The Commission made an order approving the reduction.

With these changes in the rates in Illinois and Kentucky there remained only the rates from the groups in Indiana that were out of line with the proportion maintained for many years. To restore that proportion Milwaukee filed a new schedule whereby the rates from Brazil-Clinton to Rockford and Freeport, were again placed at a parity with those from Springfield to the same places, the rates from Linton-Sullivan being correspondingly adjusted. This is the schedule that has been disapproved by the Commission. Two reports were filed, one in November, 1933, the other in April, 1934. The first, which came from a division of the Commission, was confirmed by the entire body upon denying a petition for rehearing. Suit for an injunction was promptly started by the carrier. Two days before the day appointed for the hearing, the Commission of its own motion reopened the proceeding, and thereafter filed a second report, amplifying the first one. Following that report the suit was brought to trial upon supplemental pleadings. The carrier took the position: (1) that the order of the Commission was not supported by the findings; and (2) that irrespective of the findings it was not supported by the evidence. The District Court gave a decree for the complainant upon the second ground without passing upon the first. Upon appeal to this court by the Commission and by intervening railroads, the appellees (the Milwaukee and intervening coal producers) renew the grounds of challenge put forward at the trial.

This court has held that an order of the Interstate Commerce Commission is void unless supported by findings of the basic or quasi-jurisdictional facts conditioning its power. *Florida* v. *United States*, 282 U. S. 194, 215; *United States* v. *Baltimore & Ohio R. Co.*, January 7, 1935, — U. S. —. "In the absence of such findings, we are not called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit." *Florida* v. *United States, supra.* Orderly review requires that this objection being basic and jurisdictional, be disposed of at the beginning.

The jurisdiction of the Commission to cancel the proposed schedule was invoked by the protesting carriers and producers under two sections of the statute, subdivisions 1 and 7 of § 15 and subdivision 2 of § 15a. Section 15 (subdivisions 1 and 7) is to the effect that the Commission shall have power to determine the just

and reasonable rate when a rate in force or proposed is found to be unjust or unreasonable or unduly discriminatory or otherwise unlawful. Section 15a is to the effect that in the exercise of this power to establish just and reasonable rates the Commission shall give due consideration, among other factors, "to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenue sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service."

The second report of the Commission is a long and discursive narrative. Two paragraphs at the end give the key to its meaning:—

"We find that the proposed rates, if permitted to become effective, would lead to a disruption of the rate structure on coal in the Indiana and related areas, thus impairing the revenues of the carriers serving those areas and their ability to provide the adequate and efficient transportation service contemplated by section 15a of the act; that they would cause a disruption of the individual groups from which the rates are proposed; and that they would cause a disruption of the long-standing rate relation existing for competitive purposes, between the several Indiana groups.

"We find that the proposed rates would be unreasonable and in violation of sections 1 (5) [which denounces unreasonable charges] and 15a (2) of the act [which has been summarized above]".

The statement in the second of these paragraphs that the proposed rates would be "unreasonable" must be read in the light of the report as a whole, and then appears as a conclusion insufficient as a finding unless supported by facts more particularly stated. Cf. *Florida* v. *United States, supra,* at p. 213; *Southern Pacific Co.* v. *Interstate Commerce Commission,* 219 U. S. 433, 449. There is no suggestion in the report that the rates have been so reduced as to be less than compensatory. True they do not reach the maxima beyond which charges are excessive. On the other hand, they do not pass the minima beyond which charges are too low. A zone of reasonableness exists between maxima and minima within which a carrier is ordinarily free to adjust its charges for itself. *Texas & Pacific R. Co.* v. *United States,* 289 U. S. 627, 636; *United States* v. *Illinois Central R. Co.,* 263 U. S. 515, 522. We lay to one side cases of discrimination or preference or rivalry so

keen as to be a menace to the steady and efficient service called for by the statute. Interstate Commerce Act, § 15 a. Those tendencies excluded, "a carrier is entitled to initiate rates and, in this connection, to adopt such policy of rate making as to it seems best." *United States* v. *Illinois Central R. Co., supra.*

Subjected to these tests, the finding by the Commission that the new rates are unreasonable is seen to be nothing more than a deduction from the paragraph immediately preceding, wherein we learn that the schedule, if put into effect, will disrupt the rate structure in Indiana and related areas and disturb groupings and differentials maintained for many years. This brings us to the question whether such disruption and disturbance may be deemed a sufficient reason for taking from a carrier the privilege of reaching out for a larger share of the business of transportation, and initiating its own schedule to help it in the struggle. For an answer to that question, other facts, exhibited with greater particularity in other parts of the report, must be brought forward and considered. Those affecting the Indiana groups may conveniently be stated first; those affecting groups in Illinois afterwards.

Every change of a rate schedule, either voluntary or involuntary, is a disruption *pro tanto* of the rate structure theretofore prevailing. Plainly such a disruption without more is no sufficient reason for prohibiting a change. The Indiana carriers by long continued coöperation have maintained a fixed schedule of differentials between mines in the southern group (Princeton and Booneville) and mines farther to the north. There is not a fact stated in the report to indicate that it will be unjust or impracticable to apply the new Milwaukee rates to the other lines in Indiana after increasing them by the differentials hitherto prevailing. There is not a fact to indicate that the rates so reduced will be less than compensatory or that capacity for service to the public will be impaired or put in jeopardy. "The raising of rates does not necessarily increase revenue. It may in particular localities reduce revenue instead of increasing it, by discouraging patronage." *Florida* v. *United States, supra,* at p. 214. As applied to the Indiana groups, the broad conclusions of the report, when related to the supporting findings, amount to this and nothing more, that the new schedule for Milwaukee is likely to be followed by new schedules maintaining the same ratio for other lines in

Indiana. Even if the outcome for those lines is a diminution of the profits (the return being none the less compensatory), this without more does not make it wrongful for Milwaukee to restore the long standing parity between Brazil and Springfield. At the very least the findings should inform us, if only approximately, of the extent of the expected loss; they should make it clear whether the impairment of revenues will be trivial or substantial, for only thus can the impairment be related to capacity for service. Cf. *Florida* v. *United States*, 292 U. S. 1, 9. Nothing of the kind is shown. The schedules are to be congealed as they exist, because if not congealed they will be fluid, fluidity is change, and change has the potency, if not the promise, of disturbance. As to conditions in Indiana, this and hardly more is the teaching of the report.

We pass to the relation between the Indiana groups and those in Illinois. As we have seen, parity of rates had been maintained for many years between Indiana lines transporting coal from Brazil-Clinton to northern Illinois and Illinois lines transporting coal from Springfield. There was no complaint by the Commission during those years that the relation was unfair. There was no holding to that effect when orders of the state commission prescribing lower rates in Illinois were kept in operation against the protest of Milwaukee. *Intrastate Rates on Bituminous Coal between Points in Illinois, supra.* The significance of that decision has been considered already in the course of this opinion. As we have striven to make clear, the Commission did not rule that the effect of the new rates was to establish a fair relation, still less the only fair one, between Illinois and Indiana, a relation to be maintained as something fixed and constant. The findings then made are repeated by quotation in the report in this proceeding without comment or explanation that would give them another meaning. If the schedule in controversy is to be rejected as oppressive or unreasonable, the grounds for the rejection must be looked for somewhere else than in the earlier decision.

We are warned by the new report, however, that a change once permitted has a tendency to spread. The acceptance of the new schedule for Milwaukee will lead, it is said, to requests for proportionate reductions by other lines in Indiana, and this in turn to new reductions by lines in Illinois and even in Kentucky, the outcome being characterized in the argument of counsel, though not in the report, as a rate war between the roads. The threat of such

a war may be a reason for rejecting a new schedule if the rate relation previously existing is a fair one, or even, we may assume, if the Commission is without power to avert the reprisals and thereby nullify the threat. Neither of these conditions is satisfied in this case. The Commission does not hold that the existing rate relation is intrinsically sound and fair. On the contrary, it expressly concedes that the rate situation as between the Illinois and Indiana groups may be in need of correction, though it expresses the belief that this should not be done in any piecemeal fashion.* The point of the decision is not that present rates are sound, but that they must be maintained, even if unsound, for fear of a rate war which might spread beyond control. The danger is illusory. The whole situation is subject to the power of the Commission, which may keep the changes within bounds. If Illinois lines attempt to lower their rates again, a proceeding will be available to maintain a fair relation. If the lines in Kentucky, operating in interstate commerce, apply for new reductions, the supervisory power of the Commission will subject them to the rule of reason. But other remedies even more plainly adequate are at hand in case of need. Under § 15 of the statute the Commission of its own motion may conduct a comprehensive inquiry into the rates of all the lines within the area of controversy, may fix the fair relation between one line and another, and may build the structure of the rates accordingly. *Florida* v. *United States,* 292 U. S. 1; *United States* v. *Louisiana,* 290 U. S. 70.

In the light of these considerations it is not the Milwaukee that is subject to the reproach of dealing with the matter piecemeal. All that the Milwaukee has done is to initiate a schedule which must be upheld as lawful unless adequate reasons are presented for setting it aside. Cf. *Anchor Coal Co.* v. *United States,* 25 F. (2d) 462; *Atchison, Topeka & Santa Fe R. Co.* v. *United States,* 279 U. S. 768, 773. The reproach of piecemeal action is incurred by the Commission, which has not adjudged the fairness of the relation now subsisting between Illinois and Indiana rates, which has not questioned its own capacity to prevent unjust reprisals, which has put off to an indefinite future the remodeling of the rate structure for all the carriers affected, and which has left this particular

*See the last two paragraphs of the first report by Division No. 2, which the second report has readopted and confirmed.

carrier helpless in the interval. In brief a schedule of lowered tariffs has been canceled though the facts that control the validity of the reduction have yet to be determined. This was not a full discharge by the Commission of an immediate responsibility. It was inaction and postponement. Responsibility was shifted from the shoulders of the present to the shoulders of the days to come.

We would not be understood as saying that there do not lurk in this report phrases or sentences suggestive of a different meaning. One gains at places the impression that the Commission looked upon the proposed reduction as something more than a disruptive tendency; that it found unfairness in the old relation of parity betwen Brazil and Springfield; and that the new schedule in its judgment would confirm Milwaukee in the enjoyment of an undue proportion of the traffic. The difficulty is that it has not said so with the simplicity and clearness through which a halting impression ripens into reasonable certitude. In the end we are left to spell out, to argue, to choose between conflicting inferences. Something more precise is requisite in the quasi-jurisdictional findings of an administrative agency. *Beaumont, S. L. & W. R. Co.* v. *United States*, 282 U. S. 74, 86; *Florida* v. *United States*, 282 U. S. 194, 215. We must know what a decision means before the duty becomes ours to say whether it is right or wrong.

The decree should be affirmed, and it is

So ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.